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JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 12,797

JOHN T. WATKINS, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

349 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 1153-54

UNITED STATES OF AMERICA

v.

JOHN T. WATKINS

Filed June 13, 1955—Harry M. Hull, Clerk

NOTICE OF APPEAL

Name and address of appellant: John T. Watkins, 1224 44th Avenue, Rock Island, Illinois.

Name and address of appellant's attorney: Joseph L. Rauh, Jr., 1631 K Street, N. W., Washington 6, D. C.

Offense: Refusal to answer questions before Committee on Un-American Activities of House of Representatives in vio-

lation of 2 U.S.C. 192. Concise statement of judgment or order, giving date, and any sentence. Convicted May 27, 1955. Sentenced June 10, 1955 to pay a fine of $500 and imprisonment for one year, the sentence with respect to imprisonment being suspended and defendant placed on probation.

Name of institution where now confined, if not on bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

JUNE 13, 1955

JOHN T. WATKINS,
Appellant.
JOSEPH L. RAUH,
Attorney for Appellant.

INDICTMENT

290 The Grand Jury charges:

INTRODUCTION

On April 29, 1954, in the District of Columbia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings, pursuant to Public Law 601, Section 121, 79th Congress, 2d Session, (60 Stat. 828), and to H. Res. 5, 83d Congress.

Defendant, John T. Watkins, appeared as a witness before that subcommittee, at the place and on the date above stated, and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant unlawfully refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe the question which was asked of the defendant and which he refused to answer.

Count One

Do you know Harold Fisher to be a member of the Communist Party?

Count Two

Did you know Charles Hobbe to be a member of the Communist Party?

Count Three

Did you know Henry Mack to be a member of the Communist Party?

291 *Count Four*

Do you know Ernest DeMaio to be a member of the Communist Party?

Count Five

Do you know him [Ernest DeMaio] to have ever been a member of the Communist Party?

Count Six

Did you know Charles Killinger to be a member of the Communist Party?

Count Seven

Mr. Watkins, I am going to read a list of names to you. I will read it slowly—and I am going to ask you—these are all names identified as members of the Communist Party by Mr. Rumsey in his testimony in Chicago. I am going to read the list and ask you whether you ever knew any of these people to be members of the Communist Party: Lee Landbaker; Morris Childs; Dorothy Hillyerd; Theo. Kruse; Charles Lawson; Olaf Lidel, L-i-d-e-l; Sarah Levine; Murray Levine; Harriet Leuth, L-e-u-t-h; Herbert Marsh; Ajay Martin; Harold Metcalf; John Milkevitch; Grant Oakes; Joe Ruick, R-u-i-c-k, or alias Joe Webber; Frank Rogers; Arthur Saunders; Seymour Siporin; Joseph Stern; George Teeple, T-e-e-p-l-e; Ray Teeple; Donald Tieglan, T-i-e-g-l-a-n; Rex Wielock; John Wilson; Marie Wilson; Mrs. John Wilson. Do you know any of those names I just read to you to have been members of the Communist Party?

LEO A. ROVER,
United States Attorney in and for the District of Columbia.

A True Bill:
WILSON T. M. BEALE,
Foreman.

295 Filed December 8, 1954—Harry M. Hull, Clerk

PLEA OF DEFENDANT

On this 8th day of December, 1954, the defendant, John T. Watkins, by his attorney, Sidney Sachs, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated, pleads not guilty thereto.

Defendant is granted until January 10, 1955. to file motions.

296 Filed Jan. 10, 1955

Motion to Dismiss the Indictment or for Preliminary Hearing

The defendant moves that the indictment be dismissed on the following grounds:

1. The indictment is void and illegal in that there were less than 12 members of the Grand Jury who concurred in finding the indictment who were free from prejudice or bias against this defendant, by reason of the facts stated in the affidavit of Joseph L. Rauh, Jr. attached hereto and made a part hereof.

2. The offenses with which defendant is charged are in fact a single offense. The indictment is invalid, therefore, in that it charges the defendant with many offenses, whereas if guilty he has committed only one offense.

In the alternative, the defendant should be granted a hearing at which he can determine which grand jurors concurred in finding the indictment and offer proof by examination of the grand jurors and otherwise that bias or prejudice existed on the part of the requisite number of the grand jurors.

JOSEPH L. RAUH, JR.,
1631 "K" Street.

298 Filed Jan. 10, 1955

Affidavit

JOSEPH L. RAUH, JR., being duly sworn, deposes and says that:

1. I am one of the attorneys for the defendant named in the above bill of indictment.

2. This affidavit is made in support of the Motion to Dismiss the indictment on the ground that it is void and illegal in that the grand jury which voted the indictment was illegally constituted as to this defendant.

3. On information and belief, more than 11 members of the grand jury which voted this indictment are biased and prejudiced against the defendant and unable to exercise an independent judgment, by reason of the fact that they, or close associates, including relatives, were employed by or were seeking employment with the United States or the District of Columbia Government.

4. I have been informed that the grand jury records in this Court show that 11 of the 23 members of the grand jury which voted the indictment against this defendant were employed by the Government of the United States, that the Foreman was employed by the Department of State, that the Deputy Foreman by the Department of the Navy, and that two of the grand jurors were employed by the District of Columbia Government.

299 5. It is my belief that close associates, considering the number of government employees in this jurisdiction, including relatives, of additional grand jurors were employed by the United States or the District of Columbia Government. Corroboration of this belief can be obtained as a practical matter only from examination of the grand jurors at a hearing or from examination of records not presently available to the affiant.

6. I have been informed that the grand jury records in this Court show that two of the members of the grand jury are listed as unemployed. It is my belief that these grand jurors and close associates, including relatives, of additional grand jurors have been seeking employment with the United States or District of Columbia Government. Corrob-

oration of this belief can be obtained as a practical matter only from examination of the grand jurors at a hearing or from examination of records not presently available to the affiant.

7. The alleged contempt occurred before the House Committee on Un-American Activities. Said Committee was committed by Congress to investigate "the diffusion within the United States of subversive and un-American propaganda that . . . attacks the principle of the form of government as guaranteed by our Constitution." The official, public transcript of defendant's testimony before the Committee establishes that the Committee considered him to be or to have been a Communist. The transcript also establishes that the questions on which the indictment is based relate to defendant's alleged association with purported Communists and members of the Communist Party. All of the above information was available to the grand jury and it is reasonable to believe that the grand jury was informed of it.

8. Communism, membership in the Communist Party, or association with the members of the Communist Party, present and past, has come within the past seven or eight years to have discreditable connotations, and to subject persons accused of such associations to disrepute, to economic losses, and to possible criminal or administrative action. Congress, in the Communist Control Act of 1954, Public Law 637, 83rd Cong., 2nd Sess., 23 U. S. Law Week 57, declared the Communist Party to be illegal.

9. The grand jurors who voted this indictment were asked to consider the indictment of one who allegedly had been a Communist and who refused to answer questions about persons who were purported to be Communists and members of the Communist Party. To the grand jury, therefore, this would appear to be a case inherently touching the security of the Government. Each one of the grand jurors employed by the United States or the District of Columbia Government, or seeking said employment, or having close associates, including relatives, so employed or seeking said employment, could not consider the facts presented to them with disinterested, free and open minds, absent of bias and prejudice, as required by law.

10. All persons—and this would include grand jurors and

their close associates, including relatives—who are employed by or seeking employment with the United States are subject to investigation and proceedings under Executive Order No. 10450, entitled "Security Requirements for Government Employment," and referred to as the Eisenhower Security program. The Federal Bureau of Investigation is required to investigate all cases arising under the order which involve any questions of Communist associations. Executive Order No. 10450 provides that the employment of any civilian employee must be "clearly consistent with the interests of the national security" and grants to the heads of departments and agencies, the final determination, subject to no appeal, of whether this standard is met. One of the factors to be considered in an investigation under the Order is "Any behavior, activities, or associations which tend to show that the individual is not reliable or
301 trustworthy." Other factors not enumerated in the Order may be and are considered in making a security determination under the Order. Views, statements, and actions in cases such as this are considered pertinent in proceedings under the Order.

11. Executive Order No. 10450 has been in effect since May, 1953. Those grand jurors or their close associates, including relatives, who were employed or sought employment with the United States prior to May, 1953 were subject to Executive Order No. 9835, known as the Truman Loyalty program, which, although different in its procedures, was substantially of similar scope.

12. On information and belief, each one of said grand jurors, or their close associates, including relatives, who have been employed by or are seeking employment with the District of Columbia Government have been subject to security investigation and procedures which in all essentials are like those applicable to employees of the United States. These procedures are not embodied in any document or order to which I can refer the court.

13. The total effect of the more than 7 years of operation of these successive loyalty and security programs has been to instill in government employees and employees of the District of Columbia and their close associates, including relatives, and in those desiring employment with either of said Governments, a fear of creating the appearance of sym-

pathetic association with any person or organization or action which might be considered left-wing or Communist. This fear in a grand juror is so strong, so personal and so intense that it would prevent him from casting his vote impartially, as required by his Oath and by law, and
302 amounts to an actual bias against any person accused of some act which might impede the hunt for supposed Communists.*

14. If the court will grant defendant a hearing pursuant to Rule 12(b)(4) of Federal Rules of Criminal Procedure, we expect to prove by examination of the grand jurors and otherwise that the grand jurors employed by the United States or the District of Columbia Government or seeking such employment have known or heard:

(1) About relatives, friends or fellow workers who were kept under surveillance, investigated, suspended or dismissed under the loyalty and security programs;

(2) That many such persons were investigated, suspended or dismissed by reason of associations or actions which occurred in the distant past, or which were of short duration, or were infrequent or purely casual;

(3) That many such persons were investigated or suspended or dismissed by reason of actions or associations, not of their own, but of close associates, including relatives;

(4) That many such persons were investigated, suspended or dismissed by reason of actions or associations which bore little real relation to security.

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* That fear generated by the loyalty and security program has been increased and accelerated by the enactment into law of such laws as the Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. 781, the McCarran-Walter Immigration Act, 66 Stat. 181, 8 U. S. C. 1181, the Communist Control Act of 1954, Public Law 637, 83d Cong., 2d Sess., 23 U. S. Law Week 47, the Compulsory Testimony Act, Public Law 600, 83d Cong., 2d Sess., 23 U. S. Law Week 59, the Bail Jumping Act, Public Law 603, 83d Cong., 2d Sess., 23 U. S. Law Week 60, and the Harboring of Criminal Act, Public Law 602, 83d Cong., 2d Sess., 23 U. S. Law Week 60.

303 15. We will further prove:

(1) That the net effect of these facts, known to the grand jurors, has been to create a climate of opinion, fear and intimidation among government employees and those seeking government employment that they would jeopardize their tenure or their job opportunities or provoke investigation by reason of any opinion or action or association which could be considered as evidencing the slightest sympathy with, or lack of hatred for, Communism or any other left-wing ism, including a vote against an indictment for refusal to answer questions concerning persons alleged to be members of the Communist Party;

(2) That these fears have been affirmed and strengthened by the almost daily press reports of the harsh and unjust operation of the loyalty and security programs;

(3) That this climate of opinion, fear and intimidation has affected personally those grand jurors employed by the United States or District of Columbia Government, or seeking said employment, or having close associates, including relatives, so employed or seeking such employment, so as to prevent their exercise of free will in voting on this case.

16. Affiant has personal knowledge that, during formal hearings under Executive Order 10450, persons under investigation have been asked their opinions of cases, such as the Alger Hiss, Remington, Coplon and Rosenberg cases, involving alleged Communist associations. If the
304 mere opinions of persons who have not even participated in a case thought to affect the security of the government are treated by the authorities as relevant to a decision on security or loyalty status, the grand jurors would recognize that a vote against an indictment in this case would be harmful to their security status.

17. Affiant has personal knowledge that during formal hearings under Executive Order 10450 persons under investigation have been asked their opinions of Congressional investigation committees including the House Committee on Un-American Activities. The grand jurors would recog

nize that a vote against indictment of a person who had been cited by the said Committee as contemptuous would be harmful to their security status.

18. I respectfully call the court's attention to *Dennis* v. *United States*, 339 U. S. 162, where the defendant attacked the presence of federal employees on the jury which convicted him. The Supreme Court pointed out that the Loyalty Order relied upon by the defendant as grounds for that attack preceded the trial of that case by only three months and concluded that there was no "anticipatory fear" of the "administrative implementation" of the Order. More than seven years of administrative implementation has created a real and personal fear.

19. Affiant is aware of the decision of this Court in *United States* v. *Emspak* and the related cases denying a motion to dismiss or hold a hearing, based on the presence on the grand jury of employees of the United States, 95 F. Supp 1010, aff. 91 U. S. App. D. C. 378, 203 F. 2d 54, certiorari granted on other grounds 346 U. S. 809. The Supreme Court has granted petitions for certiorari in the cases related to *Emspak*, *Quinn* v. *United States*, 374 U. S. 1008, and *Bart* v. *United States*, 347 U. S. 1011, on the issue,
305 among others, of the validity of the indictments returned by a grand jury which included ten government employees and the wives of two government employees.

20. The affiants in support of the motion to dismiss in the *Emspak* and related cases did not set forth that any federal agency would take notice of a vote against an indictment, or that government employees would recognize that a vote against indictment would be harmful to their security status.

JOSEPH L. RAUH, JR.

Subscribed and sworn to before me this 10th day of January, 1955.

MARY C. ASAY,
Notary Public.

My commission expires December 31, 1957.

306 Filed February 7, 1955

On this 7th day of February, 1955, came again the parties aforesaid, in manner as aforesaid, whereupon, the argument

of counsel on the motion of the defendant to dismiss the indictment or for a preliminary hearing is concluded; thereupon, the motion is denied by the Court.

By direction of

DAVID A. PINE,
Presiding Judge,
Criminal Court # Five.

308 To Thomas W. Beale, Clerk
Committee on Un-American Activities
House of Representatives
Congress of the United States

You are hereby commanded to appear in the United States District Court for the District of Columbia at 3rd & Constitution Ave., N. W., 4th Floor, Courtroom 8, in the city of Washington on the 23 day of May 1955 at 10:00 o'clock A.M. to testify in the case of United States v. John T. Watkins and bring with you the following material from the files of, and otherwise in the possession and control of, the Committee on Un-American Activities of the House of Representatives: (1) all records, files, memoranda, documents and other written information (other than cross references and duplications) relating to each person listed in Schedule A attached hereto and made a part hereof, and including, without limiting the foregoing, (2) the file or files, including but not limited to files referred to by the Committee on Un-American Activities as public files and those referred to by the said Committee as investigative or confidential files, on each person listed in Schedule A, and (3) all card records on, and histories of, each person listed in Schedule A and all material upon which said records and histories are based. This subpoena is issued upon application of the defendant.

May 16, 1955.

Sidney S. Sachs,
Attorney for defendant.
309 Woodward Building.

SIDNEY S. SACHS,

HARRY M. HULL,
Clerk.

By MARGARET L. BONVELL,
Deputy Clerk.

309 SCHEDULE A

1. John T. Watkins
2. Charles Hobbe (sometimes spelled Hobbie)
3. Lee Landbaker
4. Leland Baker
5. Harold Fisher
6. Henry Mack
7. Ernest DeMaio
8. Charles Killinger
9. Morris Childs
10. Dorothy Hillyerd
11. Theo Kruse
12. Charles Lawson
13. Olaf Lidel
14. Sarah Levine
15. Murray Levine
16. Harriet Leuth
17. Herbert Marsh
18. Ajay Martin
19. Harold Metcalf
20. John Milkevitch
21. Grant Oakes
22. Joe Ruick (alias Joe Webber)
23. Frank Rogers
24. Arthur Saunders
25. Seymour Siporin
26. Joseph Stern
27. George Teeple
28. Ray Teeple
29. Donald Tieglan
30. Rex Wielock
31. John Wilson
32. Marie Wilson
33. Mrs. John Wilson

310 To: Ralph R. Roberts,
Clerk of the House of Representatives,
Congress of the United States.

You are hereby commanded to appear in the United States District Court for the District of Columbia at 3rd & Consti-

tution Ave., N. W., 4th Floor, Courtroom 8, in the city of Washington on the 23 day of May 1955 at 10:00 o'clock A.M. to testify in the case of United States v. John T. Watkins and bring with you the following material from the files of, and otherwise in the possession and control of, the Committee on Un-American Activities of the House of Representatives: (1) all records, files, memoranda, documents and other written information (other than cross references and duplications) relating to each person listed in Schedule A attached hereto and made a part hereof, and including, without limiting the foregoing, (2) the file or files, including but not limited to files referred to by the Committee on Un-American Activities as public files and those referred to by the said Committee as investigative or confidential files, on each person listed in Schedule A, and (3) all card records on, and histories of, each person listed in Schedule A and all material upon which said records and histories are based. This subpoena is issued upon application of the defendant.
May 16, 1955.

SIDNEY A. SACHS,
Attorney for defendant,
309 Woodward Building.

HARRY M. HULL,
Clerk,
By MARGARET L. BOSWELL,
Deputy Clerk.

311 *SCHEDULE A*

1. John T. Watkins
2. Charles Hobbe (sometimes spelled Hobbie)
3. Lee Landbaker
4. Leland Baker
5. Harold Fisher
6. Henry Mack
7. Ernest DeMaio
8. Charles Killinger
9. Morris Childs
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22. Joe Ruick (alias Joe Webber)
23. Frank Rogers
24. Arthur Saunders
25. Seymour Siporin
26. Joseph Stern
27. George Teeple
28. Ray Teeple
29. Donald Tieglan
30. Rex Wielock
31. John Wilson
32. Marie Wilson
33. Mrs. John Wilson

307 U. S. MARSHAL'S RETURN OF SERVICE
FOR
THE DISTRICT OF COLUMBIA

Cr. Case No. 1153-54

U. S.

vs.

John T. Watkins

Summoned the within-named by delivering a true copy of subpoena to Thomas W. Beal, 225A 160 B., Personally, 5/16/55; accepted check. Ralph R. Roberts, U. S. Capitol, Personally, 5/16/55; accepted check.

CARLTON G. BEALL,
United States Marshal,
By JOHN L. SULLIVAN,
Deputy.

312 (Filed May 20, 1955)

Motion to Quash Subpoenas

Comes now the United States, by the United States Attorney for the District of Columbia, and moves this Honorable Court to quash the subpoena *duces tecum*[1] served herein on May 16, 1955, upon Thomas W. Beale, Clerk, Committee on Un-American Activities, House of Representatives, Congress of the United States, and an identical subpoena addressed to and served on the same date upon Ralph R. Roberts, Clerk of the House of Representatives, Congress of the United States, for the following reasons:

1. Rule 17(c) of the Federal Rules of Criminal Procedure, which authorizes the issuance of subpoenas *duces tecum*, does not require the government to produce the documents sought by the defendant because they are not "evidentiary".
2. Compliance with the subpoena would be unreasonable and oppressive.
3. The subpoena is a "fishing expedition".
4. Some of the documents called for would disclose the identity of confidential informants.
5. Most of the documents called for relate importantly, and some critically, to the national security.
6. Most of the documents called for in the subpoena, apart from their being in the possession of the legislative branch, are, in themselves, confidential with respect to their content and their purpose.

313 7. The court is without jurisdiction to direct the House of Representatives to produce its records.

LEO A. ROVER,
United States Attorney.
WILLIAM A. HITZ,
Assistant United States Attorney.

---

[1] Copy is attached hereto.

323 (Filed May 26, 1955)

Motion With Regard to Subpoenaed Documents

1. Defendant requests the Court:

(a) To deny the Government's "Motion to Quash Subpoenas".

(b) To rule that the documents specified in the subpoenas issued in this case to the Clerk of the House of Representatives and to the Clerk of the Committee on Un-American Activities of the House of Representatives are relevant and material to defendant's case, and

(c) Respectfully to request the House of Representatives to permit the inspection and copying of said documents.

2. Defendant moves the Court, if defendant's above requests are denied, to dismiss the indictment against him because the documents are essential to a full defense against the Government's case and without them he is deprived of his constitutional rights to a fair trial and compulsory process under the Fifth and Sixth Amendments to the Constitution.

JOSEPH L. RAUH, JR.,
SIDNEY SACHS,
Counsel for Defendant.

345 WAIVER OF TRIAL BY JURY

With consent of the United States Attorney and the approval of the Court, the defendant waives his right to trial by jury.

JOHN T. WATKINS,
Defendant.
SIDNEY A. SACHS,
Attorney for Defendant.

I Consent
W. HITZ,
United States Attorney.

APPROVED:
JOSEPH C. MCGARRAGHY,
Judge.

346 (Filed May 26, 1955)

On this 26th day of May, 1955 came the attorney of the United States; the defendant in proper person and by his attorneys, Sidney Sachs, Joseph L. Rauh, Jr., Norma Zark and Daniel Pollitt; whereupon the motion of the government to quash subpoenas, heretofore heard and taken under advisement is by the Court granted; the motions of the defendant to deny the government's motion to quash subpoenas, for ruling that documents specified in subpoenas are relevant and material to defendant's case, and for inspection and copying of said documents, and for dismissal, heretofore heard and taken under advisement, are by the Court denied; whereupon the defendant waives trial by jury and the attorney of the United States consenting thereto, and with approval of the Court, the trial proceeds.

The motion of the defendant for leave to inspect Grand Jury minutes is by the Court denied.

The motion of the defendant to dismiss the indictment or in the alternative for a judgment of acquittal is heard in part and continued until the meeting of the Court, tomorrow morning at 10:30 a.m.

347 (Filed May 27, 1955)

On this 27th day of May, 1952, came the parties aforesaid, in manner as aforesaid, in this case, the trial of which was respited yesterday; the motion of the defendant to dismiss or in the alternative for judgment of acquittal, coming on to be heard further, after argument by counsel, is by the Court denied.

It is adjudged by the Court that the defendant is guilty as indicted.

The defendant is permitted to remain on bond pending sentence.

348 (Filed June 14, 1955)

On this 10th day of June, 1955 came the attorney for the government and the defendant appeared in person and by counsel, Sidney Sachs, and Joseph L. Rauh, Jr., Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the

offense of Contempt of Congress as charged on counts one thru seven, inclusive and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) year, and to pay a fine of Five Hundred ($500.00) Dollars.

IT IS ADJUDGED that the execution of this sentence be and is hereby suspended insofar as the term of imprisonment is concerned only, and that the said defendant be and is hereby placed on probation in charge of the Probation Officer of the Court.

JOSEPH C. McGARRAGHY,
United States District Judge.

350 (Filed June 13, 1955)

ORDER

Defendant having applied pursuant to Rule 38(a)(3) of the Federal Rules of Criminal Procedure for a stay of the sentence to pay a $500 fine, and it appearing that an appeal is being taken by defendant, it is hereby

ORDERED AND DECREED this 13th day of June, 1955, that the said fine should be, and is, stayed pending appeal.

JOSEPH C. McGARRAGHY,
Judge.

2 Wednesday, May 25, 1955.

The above-entitled matter came on for hearing before Judge Joseph C. McGarraghy at 10 o'clock a. m.

3 PROCEEDINGS

Mr. Hitz: Your Honor, here is the waiver of jury. (Paper handed up to court.) That is consented to by
4 the Government.

Your Honor, in this case the defendant has filed upon the Clerk of the House of Representatives and upon the Clerk of the Un-American Activities Committee of the House, a subpoena duces tecum which, to put it shortly, calls

for all of their papers in connection with the testimony of the defendant Watkins, including all their papers with reference to him, himself.

. . . . . .

11 I should perhaps say that the field of the investigation here is the infiltration of the Communists into union activity in this country, having in mind possible amendments that would bear upon the Taft-Hartley, so-called Taft-Hartley Act, and the Internal Security Act.

. . . . . .

24 Now, not under oath, not under the oath of an affidavit, I have asserted in the memorandum in support that the Clerk of the committee has informed me that it will take somewhere—about three weeks, I think it is,——

25 The Court: I think you said two.

Mr. Hitz: —about two weeks to assemble the material; that it will take at least three—I think they call them analysts—to obtain the material.

. . . . . .

55 Mr. Hitz: In this particular case, it was investigating the infiltration into unions of Communists and persons with Communist Party sympathies, for the avowed purpose—I say the avowed purpose because it was avowed by its chairman at the commencement of the hearings—with the avowed purpose of determining whether the Subversive Activities Act, no, the Internal Security Act, should be amended so as to deny the Taft-Hartley Act privileges to unions which have become infiltrated——

. . . . . .

72 The Court: Gentlemen, after yesterday's argument, I spent the afternoon examining all the authorities that you were good enough to furnish me on both sides, and I have come to the conclusion that the documents which the subpoena seeks are not relevant to the issues in the case. Therefore, I will grant the motion to quash and will deny the defendant's motion in the alternative.

. . . . . .

75 Mr. Hitz: . . . We will offer our testimony from Mr. Kunzig, who will be our only witness, and he was then counsel for the committee, co-chief for it, offer testimony that this was a continuation here in Washington of a hearing commenced in Chicago some time before, and that the hearings were for the purpose of determining the extent

of infiltration of Communists and Communism into unions throughout the country; that the Chicago phase of it was geographical to that area, and that when Mr. Watkins could not be located, or for some reason was not located when the committee went to Chicago to hold its hearings there, it was arranged for Mr. Watkins then to come to Washington. That is why there was a continuation in Washington of the Chicago hearings, to hear Mr. Watkins and one or two others.

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80 Thereupon ROBERT L. KUNZIG was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

81 Direct examination.

By Mr. Hitz:

Q. Mr. Kunzig, give your full name, please?

A. Robert L. Kunzig, K-u-n-z-i-g.

Q. You are an attorney, are you, sir?

A. Yes, sir.

Q. Are you a member of any bars, legal bars?

A. I am a member of the bar of the Commonwealth of Pennsylvania.

Q. Were you formerly employed by the House Un-American Activities Committee?

A. Yes. During the past two years, I was counsel for the House Un-American Activities Committee.

Q. You are not with the committee at the present time, are you, sir?

A. No, at the present time I am the assistant to the chairman of the Civil Aeronautics Board here in Washington, D. C.

Q. Thank you, sir.

Therefore, in April 1954, were you counsel for the Un-American Activities Committee?

A. Yes, sir.

Mr. Hitz: Your Honor, I have certain formal documents I would like to have marked and introduced, the first of which I would like the clerk to mark Government Number

1, a document entitled, "House Resolution No. 2,"
82 which is a message addressed to the Senate, stating that Joseph Martin of Massachusetts was elected Speaker of the House, and that Lyle O. Snader was elected the Clerk of the House. That is transmitted to the Senate, and you might say that is one of the mechanics of getting the House in operation for the particular session. Mr. Snader then becomes the certifying officer for other papers.

Any objection?

Mr. Sachs: I would like to see it, please.

The Deputy Clerk: I have marked that Government's Exhibit Number 1 for identification.

(House Resolution 2 was marked as Government Exhibit 1 for identification.)

The Court: Is there any objection, Mr. Sachs?

Mr. Sachs: No objection.

The Court: Very well, it will be admitted.

Mr. Sachs: Is that in evidence?

The Deputy Clerk: Government's Exhibit Number 1 in evidence.

(Government Exhibit 1 was received in evidence.)

Mr. Hitz: Next document I would like to have marked is a statement by Mr. Snader, the Clerk I have just indicated here, to the effect that there were certain named
83 persons, members of the House of Representatives, designated to serve as members of the Committee on Un-American Activities. This is a certification from the journal of the House. It names certain persons, and I will read them to the court if this is admitted.

(Statement by Clerk of House designating members of the committee was marked as Government's Exhibit 2 for identification.)

Mr. Hitz: Mark these 3, 4, 5.

(Documents were marked as Government Exhibits 3, 4 and 5 for identification.)

Mr. Sachs: No objection.

The Court: Is that number 2?

Mr. Sachs: Yes.

The Court: Very well, it will be admitted.

The Deputy Clerk: It will be Government's Exhibit Number 2 in evidence.

(Government Exhibit 2 was received in evidence.)

Mr. Hitz: This document, Number 2 for the Government, states that the journal of the House states that on January 19, 1953, there were designated to comprise the Un-American Activities Committee of that body: Mr. Velde, Mr. Kearney, Mr. Jackson, Mr. Clardy, Mr. Scherer, Mr. Walter, Mr. Moulder, Mr. Doyle, and Mr. Frazier.

84 I next will offer Government Number 3, which I will describe for the written record to be a certified copy of the report of the Un-American Activities Committee to the House of Representatives, citing the facts of the alleged contempt, and asking the House to certify that contempt to the United States Attorney. I offer that not for the contents of the report, but for the fact that it was made.

Mr. Sachs: That is all right. That is the part I was going to object to.

The Court: Very well, it will be received.

The Deputy Clerk: Government's Exhibit——

Mr. Sachs: The reason I was going to make that point is, we find that certain things are left out of that report. It is not a complete report of the proceedings.

The Deputy Clerk: It will be Government's Exhibit Number 3 in evidence.

(Government Exhibit 3, report of the Committee to the House, was received in evidence.)

Mr. Hitz: I don't think, since it has been received, at this time we need make any further use of it than to have the record indicate what I indicated by describing it for Your Honor and for the record, that it indicates the certification by the committee to the House.

The next is House Resolution 534, which has been
85 marked Government Number 4 for identification. The House resolution is the one which cited the alleged contempt of Mr. Watkins to the United States Attorney for criminal proceedings.

Any objection, Mr. Sachs?

Mr. Sachs: No objection.

The Court: It will be admitted.

The Deputy Clerk: Government's Exhibit Number 4 in evidence.

(Government Exhibit 4, House Resolution 534, was received in evidence.)

Mr. Hitz: Government's 4 does just what I have indicated by the identification of it. It was the resolution which was passed by the House and did cite to the United States Attorney the facts of the contempt of the Un-American Activities Committee by Mr. Watkins.

* * * * * * *

86 Mr. Hitz: The next document is the actual certification by the Speaker of the House to the United States Attorney. It is in the form of a letter.

Mr. Hitz: That is Government 5.

Mr. Sachs, any objection?

Mr. Sachs: No objection.

Mr. Hitz: May it be received?

The Court: It will be received.

The Deputy Clerk: It will be Government's Exhibit Number 5 in evidence.

(Certification to U.S. Attorney, Government Exhibit 5, was received in evidence.)

By Mr. Hitz:

Q. Mr. Kunzig, the Un-American Activities Committee is a standing committee of the House of Representatives, is it not, sir?

A. That is correct.

Mr. Hitz: For the court and for the record, it was established by Public Law 601, Section 121, of the 79th Congress, and it has been codified into 60 Statutes at Large, 828, as is indicated in the first introductory paragraph of the indictment.

By Mr. Hitz:

87 Q. Mr. Kunzig, do you have a copy of Chicago Area Number 3 Report on the Investigation of Communist Activities in the Chicago area?

A. Yes, I do.

Q. That is, hearings of the Committee on Un-American Activities.

Mr. Hitz: Do you have a copy, Mr. Sachs?

Mr. Sachs: If you will bear with me just a moment, I think we do. Is that Part 3?

Mr. Hitz: That is Part 3.

By Mr. Hitz:

Q. And it is in that volume, is it not, Mr. Kunzig, that Mr. Watkins' testimony of April 29, 1954, appears?

A. Yes.

. . . . . .

88 By Mr. Hitz:

Q. Mr. Kunzig, would you be good enough to turn to page VI at the front, and look, and perhaps you will recognize there the portion of the statute that creates the Un-American Activities Committee. Will you look at it and tell me, were you functioning under that particular section? and if so, I will read it.

Mr. Sachs: Excuse me, please.

. . . . . .

90 Mr. Hitz: I was asking Mr. Kunzig if the statute creating the committee and under which they were operating in April 1954 is reprinted in part on page VI of this Washington hearing of the Chicago series.

The Witness: Yes, it is.

Mr. Hitz: And I don't think I need to read it into the record. I will be glad to read it to the court. Roughly, it is to the effect that the committee shall investigate the extent, character and objects of un-American propaganda activities in the United States; (2) the diffusion

within the United States of subversive and un-American propaganda that is instigated from foreign countries, or of a domestic origin, and attacks the principle of the form of government as guaranteed by our Constitution; and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Then, certain procedures are set up in the final paragraph. We don't care to read them. They are, of course, available to the court, because it is a statute that is passed, and you need not even take judicial notice of that.

By Mr. Hitz:

91 Q. Now, Mr. Kunzig, would you be good enough to tell us what the committee was investigating at the time that it held its hearing in Washington on April 29th, to which Mr. Watkins had been called?

Mr. Sachs: Just a moment, please.

If Your Honor please, I wonder if Mr. Hitz would be good enough to elicit from the witness the source of his information before the witness is allowed to answer that question.

The Court: I suppose the general counsel for the committee—I suppose he knows that as general counsel of the committee. Would he not?

By Mr. Hitz:

Q. Did you know what the purpose of the committee was?

A. Oh, certainly, sir. It would be very difficult to be in a position of general counsel of the committee and not know what the purpose of the hearings would be.

* * * * * * *

92 By Mr. Hitz:

Q. Would you be good enough to state whether the hearing in Washington on the 29th of April was a continuation of any other hearing?

A. Yes, in March of that year——

Mr. Sachs: I think that he has answered the question.

By Mr. Hitz:

Q. It was a continuation of what hearing?

A. It was a continuation of hearings which started in, I believe, if my memory serves correctly, March 15th and 16th of 1954, in Chicago, Illinois, and certain witnesses were unavailable or couldn't be found, and therefore it was continued to Washington.

Mr. Sachs (Simultaneous with end of answer): Now, if Your Honor please,——

The Court: Well, I think it is relevant.

By Mr. Hitz:

93 Q. Have you finished?

A. I was about to say that certain witnesses could not be found, and therefore, as you can well imagine, Congressmen have to follow a pretty careful schedule, have to go back for votes and various things, and so many times hearings are continued back to Washington, D. C., when it then becomes necessary to bring the witness to Washington, because the Congressmen can't get out of the city.

Q. What was under consideration by the committee when it held this hearing in Washington on April 29, 1954?

Mr. Sachs: If Your Honor please, I think that they should be confined to the record at this point. I don't think this witness' statement as to what was under consideration is proper.

The Court: I will overrule the objection.

A. The matters that were under consideration involved largely Communism or alleged Communist infiltration into labor unions, and we examined into that subject quite carefully in Chicago, and continued on this particular day in Washington with the defendant here today.

By Mr. Hitz:

Q. Previously, had the committee investigated that particular problem in other localities besides Chicago?

A. Yes, sir. That was the subject which was more or less under continuous investigation and had been in-

94 vestigated in various cities, such as San Francisco, Los Angeles, Columbus, Ohio, and various other cities, Washington, D. C., New York, New York; and this was a hearing in Chicago and continued in Washington, D. C.

Q. Did the committee also explore this problem in the Pacific Northwest?

A. Yes, we had very lengthy hearings in Seattle and in Portland on that subject.

Q. Now, publicly at any stage of the Chicago hearings—and you say this was a part of the Chicago hearing, although in Washington. Publicly, at any stage of the Chicago hearing prior to April 29th, did the chairman make a public statement of the purposes of this course of inquiry? Just answer "Yes, he did" or "No, he did not."

A. Yes.

Q. Where did he make that statement with reference to the Chicago hearings?

A. He made that statement on the opening day at the Chicago hearings, publicly for all to hear.

Q. Now, what was the publicly announced purpose of this particular phase of the inquiry into infiltration into unionism?

Mr. Sachs: May I make a few points, Your Honor?

First of all, I don't think we are interested in what the purpose was. I think we are interested in what
95 the subject of the inquiry was.

The purpose, if we get into questions of purpose, we are going to get into a confused area that we debated to some extent yesterday, whether it was a legislative purpose or not.

It seems to me the issue here is, what was the subject matter of the inquiry.

The second point that I would like to make is to reiterate my objection that what the chairman said at Chicago is irrelevant to this case.

The Court: I overrule the objection.

Mr. Sachs: Could the question be reread?

The Witness: Yes, please.

(The pending question was read by the reporter.)

A. The publicly announced purpose, as I recall it, was to investigate into labor unions, into the problem of possible infiltration, and that it was made clear that the committee itself had this subject under investigation, that the committee had been largely responsible for the passage of the Internal Security Act of 1950, and that at the very moment we were in Chicago, a vital amendment to that Act was at that moment before the committee.

In other words, the House had referred a bill to the committee on that very subject of infiltration of labor unions, Communist infiltration, and we were looking
96 into that subject at that time.

I might add that bill has since become a law of the United States.

Mr. Sachs: May it please the court, I ask that his last volunteered statement be stricken, and I move that his whole answer be stricken, on the ground that it is improper for him to testify as to what happened, when we have the printed transcript here. I don't think that his testimony is the best evidence.

The Court: I will deny your motion.

By Mr. Hitz:

Q. Now, you say that ultimately there was passed by the House, in the same session in which Mr. Watkins testified, the subject matter of this indictment, an amendment to the Internal Security Act of 1950, having to do with infiltration of unions by the Communists?

A. Yes, sir, that became law. It was passed, I believe, sometime in August, one of the last days of the Congress.

Q. And do I understand you to say that at the time of the commencement of the Chicago hearings, the House had already referred to your committee for——

Mr. Sachs: If Your Honor please, I am sorry, I don't want to interrupt Mr. Hitz, but it——

Mr. Hitz: Well, you are certainly doing it, Mr. Sachs.

97 The Court: As a matter of fact, I think the witness has already covered the subject.

By Mr. Hitz:

Q. You say that ultimately this was passed?

A. Yes.

Q. This amendment to the Internal Security Act. Was it passed after the initial Chicago hearing, or after that, as well as after April 29th?

A. It was passed after the initial Chicago hearing, and after the April 29th date at which this defendant here today testified.

Q. Thank you, sir.

Now, in addition to what you have indicated the committee had under consideration with respect to legislation, was there any other, or other matters that the committee was considering in the field of subversive activities, to recommend to the House?

Mr. Sachs: Just a moment, please. May I object, if Your Honor please. It seems to me that we should be limited at least to public statements at the hearing, and that there is just no limit to what we can get into if this gentleman is allowed to testify as to the purpose of the committee.

Mr. Hitz: I can so limit it.

The Court: I think so.

By Mr. Hitz:

98 Q. ——as indicated in the public statement of the chairman at the commencement of the Chicago hearing?

A. May I see that statement?

Q. Yes.

Mr. Sachs: The record, of course, is clear that we did not waive our objection to the evidence, as to what happened in Chicago.

The Court: Yes, I understand.

(Witness inspecting document)

By Mr. Hitz:

Q. If you do not recall, I can ask that direct question. Do you recall or not?

A. I don't recall the chairman's exact words at the moment, no.

Q. Do you recall whether or not the chairman stated at that time that there was under consideration by the committee a possible recommendation with respect to an immunity statute? Did the chairman state anything in that connection?

Mr. Sachs: May it please the court, the witness has before him the complete transcript.

The Court: Yes, I think he should refer to the transcript.

A. Yes. Among the recommendations which were being studied was an immunity statute, which we were at
99 that time working on before the House, and also one involving confidential devices being used in investigation, and so forth.

By Mr. Hitz:

Q. Now, have you refreshed your recollection on this last subject from looking at a portion of the public hearings of the committee?

A. Yes, sir, I have.

Q. And of the public hearings, that part is what?

A. I am looking at the document entitled, "Investigation of Communist Activities in the Chicago Area, Part 1," dated Monday, March 15, 1954.

Q. And of those hearings, particularly what part were you looking at to refresh yourself?

A. Page 4165.

Q. And who is making a statement, if he is making one?

A. The chairman of the committee, Harold Velde.

Q. In public session?

A. Opening statement on the opening day, public.

. . . . . .

100 By Mr. Hitz:

Q. Mr. Kunzig, did you, in the testimony we will shortly get to, of Mr. Watkins here in Washington on April 29th, incorporate in your questions of him, information that had been given under oath by other witnesses at

other times, concerning Mr. Watkins' Communist Party activities?

A. I did.

Q. Were you limiting yourself to that much of the
101. information in the hands of the committee? Tell us what it was that the committee had learned about Mr. Watkins prior to this testimony.

A. May I refer to the specific questions which I asked Mr. Watkins?

Q. I am sure the court will allow you, for the sake of completeness and accuracy.

The Court: Very well.

A. There was testimony from one Mr. Spencer, one Donald Spencer, and I asked the question:

> "Now, Mr. Watkins, on September 3, 1952, at hearings before this committee, one Donald Spencer testified as follows:—

Mr. Sachs: Excuse me. I think the question was, what information under oath did the witness have, not what question did he ask Watkins.

The Court: Yes, that was my understanding.

The Witness: It was interwoven.

Mr. Hitz: My understanding was that Mr. Sachs objected that this witness wouldn't know what the committee had in mind, and therefore I said, Well, I think we can indicate, from what questions were asked of Mr. Watkins, what the committee had in mind before he was called. Mr. Kunzig at the hearing confronted Mr. Watkins with what other people had said publicly.

102. The Court: I understood this witness was going to testify to what information the committee received in Chicago with respect to Mr. Watkins. Wasn't that what you wanted?

Mr. Hitz: That is precisely it, but Mr. Kunzig read that information to Watkins here in Washington, said in effect, "What have you got to say about this accusation?" And Mr. Kunzig is relating now what it was the committee had, and we are overcoming an objection by Mr. Sachs——

The Court: I think he may proceed.

Mr. Sachs: It's really not the question. If he asked that question, I'd object.

The Witness: May I proceed?

A. (Continuing) The question that was originally asked of Mr. Spencer was:

"During the period that you were a member of the Farm Equipment Workers, did you become a member of the Communist Party?"

Mr. Spencer said,

"Yes, sir.

"Question: When did you become a member?

"Mr. Spencer: In 1943, in October.

"Question: How long did you remain a member of the Communist Party?

"Spencer: Well, my dues were paid until the first of January, 1946.

103 "Question: Who recruited you into the Communist Party?

"Spencer: Walter Rumsey, R-u-m-s-e-y, encouraged me into the Party with the endorsement and full knowledge of John Watkins.

"Question: Is that John Watkins?

"Spencer: Yes, sir. He was district vice president of the FE at that time."

Now, shall I go on, sir.

By Mr. Hitz:

Q. No.

Now, prior to the testimony of Mr. Watkins on the date that we are concerned with, had the committee received public testimony from this man Rumsey, who was referred to by witness Spencer, which you have just read?

A. Yes.

Q. Just answer whether it did or did not.

A. Yes.

Q. Does the fact that the committee had received that information prior to Mr. Watkins' testimony, and that it was testimony given in a public hearing, reflect itself in this record of Mr. Watkins' testimony?

A. Yes, it does. I asked about these questions.

Q: You asked Mr. Watkins?

A. Yes.

104 Q. Now, confining yourself to that portion of the information that was given publicly by Mr. Rumsey, which is contained in the Watkins hearings, will you refer to it?

A. Yes, sir. Shall I continue?

Q. And for the record, let us find the page.

A. I am now on page 4237 of the investigation of Communist activities in the Chicago area, Part 3, April 29, 1954.

Q. All right, sir.

A. And I referred to the question that I had asked Mr. Rumsey,

"Did you ever pay dues to Mr. Watkins?" and the answer was,

"Yes."

Q. That is, Mr. Rumsey had previously testified on March 16, 1954,——

A. Yes.

Q. ——that he paid dues to Mr. Watkins. Is that the purport of the testimony here?

A. That is right.

Q. Now, was that fact known to the committee prior to the testimony of Mr. Watkins on April 29th?

A. Very definitely, certainly.

Q. Is there any other testimony of Mr. Rumsey linking Mr. Watkins to Communist Party activities which was known to the committee prior to the calling of Mr.

105 Watkins, and which is reflected in the Watkins hearings?

A. Yes, on page 4274 of the same hearings I have just been reading from, when Mr. Rumsey was before the committee, I had asked him the question,

"Now, how long did you belong to the Communist Party?

"Rumsey: It would be in August 1944 when I left.

"Kunzig: To whom did you pay dues in the Party, Mr. Rumsey?

"Rumsey: Well, it would be the various organizers; that is, district organizers.

"Kunzig: Did you ever pay dues to Mr. Watkins?
"Rumsey: Yes.
"Kunzig: Was this at the beginning?
"Rumsey: At the start.
"Kunzig: Do you recall how much dues you paid?
"Rumsey: It was on the percentage, it was prorated, percentagewise."

Then I asked Mr. Rumsey:

"Did you collect dues from people in the Communist Party?"

and then I said,

"In the case of Watkins, did you collect dues
106 from him under the name of Watkins or Sam Brown?"

and the answer of Mr. Rumsey was,

"Sam Brown."

That had to do with an alias which was another part of the testimony.

Q. Now, Mr. Kunzig, the information that you have just read us, question and answer of Mr. Spencer, and question and answer of Mr. Rumsey, was that information which had been received in sworn testimony publicly by the un-American Activities Committee prior to April 29, 1954?

A. Yes.

Mr. Hitz: Your Honor, there has been a stipulation entered into between the Government and the defense in this case, that the Public Hearing Number 3 of the Chicago investigation, so-called, copy of which you have and the witness has and counsel has, is an accurate statement of what took place on the day of April 29, 1954. Both sides have reserved the right to object on various other grounds, such as materiality and relevancy and competency, but that it is accurate has been agreed to.

That being the case, the Government at this time will offer in evidence all of the testimony on April 29th, 1954, as contained in that document, which was given by Mr. Watkins,

including the introductory paragraphs contained on
107 page 4265.

The Court: How far does that go? 4278?

Mr. Hitz: It will be 4279, when the next witness is called. Any objection, Mr. Sachs?

Mr. Sachs: Well, I didn't understand what Mr. Hitz meant when he said including the introductory paragraph.

The Court: I suppose he meant the first paragraph on page 4275.

Mr. Sachs: 4275?

The Court: 4265.

Mr. Hitz: It would embrace from the point where Mr. Velde's name is mentioned as Speaker, about the fourth paragraph,——

The Court: "The Committee will be in order"?

Mr. Hitz: "The Committee will be in order." From that point on to the end of the testimony of Mr. Watkins.

Mr. Sachs: No objection.

Excuse me let me withhold that "no objection" for just one minute.

(After conferring with co-counsel:) I would like to reinstate that "no objection."

The Court: Very well, it will be admitted.

The Deputy Clerk: It will be Government's Exhibit Number 6 in evidence.

108 (Part 3 of Chicago hearings was marked as Government Exhibit 3 and received in evidence.)

Mr. Hitz: Mr. Sachs, this might be an appropriate time to get this copy which you and I each initialed, because the court has one he may care to use for some other reason.

The Court: Is that the copy you are marking in evidence?

Mr. Hitz: This is the copy we are going to mark, of the same document. I think the record will sufficiently show what portions of it have been offered and received, and at some future time we might mark it.

Mr. Sachs: Is that Number 6?

Mr. Hitz: That is Government's Number 6.

By Mr. Hitz:

Q. Now, Mr. Kunzig, were you present on April 29, 1954, when Mr. Watkins testified?

A. Yes, I was there.

Q. Was it in Washington?

A. Yes, sir.

Q. Is Washington in the District of Columbia?

A. Yes, sir.

Q. I don't mean to be facetious, but we have to ask that question to satisfy certain people.

109 Where did the committee meet on that day, sir?

A. The committee met in the Caucus Room as I recall. Yes, in the Caucus Room. That is Room 362 of the Old House Office Building.

Q. At that time, who was chairman of the committee, Mr. Kunzig?

A. Harold H. Velde.

Q. Were there other members of the staff present, without naming them?

A. Yes.

Mr. Hitz: Your Honor, that gets us to that portion of the document which we have offered and has been received without objection. I would like to suggest the procedure of having Mr. Kunzig actually read it. It is a question of him reading it or myself. I am sure he can do it better. Or may the court permit him to read it?

The Court: You may proceed.

. . . . . .

110 By Mr. Hitz:

Q. Mr. Kunzig, will you read the testimony, please, beginning with Mr. Velde, and read it slowly enough that they can all get it, including the stenographer can follow it.

111-12 A. "Mr. Velde. The committee will be in order."

(Whereupon, the witness continued to read from Government Exhibit 6, page 4265, line 9 of the text, through line 7, page 4266, at which point he interpolated as follows:)

Then there is a mistake here. It says Mr. Kunzig again, but it obviously is the answer given by Mr. Watkins. The answer given was:

"1244 22d Avenue, Rock Island, Ill."

(Whereupon, the witness continued to read from the

same exhibit, through line 25, page 4267, where he interpolated:)

And then I went on and asked:

(Whereupon, the witness continued to read from the same exhibit, through line 40, same page, where he interpolated:)

And then Kunzig talking again:

(Whereupon, the witness continued to read from the same exhibit, through line 6, page 4268, at which point he interpolated:)

And then I, Kunzig, asked:

(Whereupon, the witness continued to read from the same exhibit, through line 12, same page, where he interpolated:)

Then I asked Mr. Watkins:

(Whereupon, the witness continued to read from the same exhibit, through line 21, same page, where the
113 following interruption occurred:)

By Mr. Hitz:

Q. Mr. Kunzig, let me interrupt you, please.

Do you recall whether what Mr. Watkins is now being quoted as saying to the committee was read from a written statement or was it orally given extemporaneously, so to speak?

A. No, this was read from a written, prepared statement that Mr. Watkins had with him.

Q. Only this much of it, or other portions of his testimony?

A. This much now, and there will be something else coming later.

Q. When you conclude that part which he read in this passage, will you tell us, and when he commenced reading from the next statement, will you inform us of that?

A. Yes.

Q. Thank you.

A. To the best of my knowledge.

Q. Yes, sir.

Will you start reading from the record at that point where he commenced reading from his statement?

A. Yes, sir.

"Mr. Watkins: I am not now nor have I ever been a card-carrying member of the Communist Party."

114-15 (Whereupon, the witness continued to read from Government Exhibit 6, page 4268, line 21, through line 37, same page, where he interpolated as follows:)

There is one more paragraph which I honestly cannot recall at the present whether it was written or whether he added that orally, so I will just go on and read it from the record, if I may. This is Mr. Watkins again:

(Whereupon, the witness continued to read from the same exhibit, through the 41st line, same page, where he interpolated:)

Now there is no further reading any more until a later time.

(Whereupon, the witness continued to read from the same exhibit, through line 33, page 4271, where he interpolated:)

And now he is reading:

(Whereupon, the witness continued to read, through the next three lines, where he interpolated:)

End quote. Velde going on:

(Whereupon, the witness continued to read, through line 13 from the bottom of page 4272,

. . . . . .

116-17 The Court: I think we had stopped at the bottom of page 4272, had you not?

The Witness: Yes, sir.

The Court: You may proceed.

(Whereupon, the witness continued to read, starting with line 12 from the bottom of page 4272, and continuing through line 13 from the bottom of page 4273, at which point he interpolated:)

And then I read:

" 'Did you ever pay dues to Mr. Watkins?' "

And then I said:

"The answer was 'Yes.'"

Now, Kunzig speaking again:

"Now, I ask you, 'Did Mr. Rumsey ever pay dues to you?'"

(Whereupon, the witness continued to read, through line 2, page 4274, where he interpolated:)

And then I read:

"'Now, how long did you belong to the Communist Party?'"

(Whereupon, the witness continued to read, 118-19 through line 13, same page, where he interpolated:)

Then I spoke and said:

"Now you are saying very definitely that no dues were paid to you by Mr. Rumsey?

"Mr. Watkins: I said very definitely they were not.

"Mr. Kunzig: Now, I asked this question of Mr. Rumsey:"

and I read:

"'Did you collect dues from people in the Communist Party?'"

and then I went on and said,

"and he went on and testified yes, that he collected dues, and so forth, and I said:"

and I quoted:

"'In the case of Watkins, did you collect dues from him under the name of Watkins or Sam Brown?'"

and then I asked Mr. Watkins:

"And he answered: 'Sam Brown.'"

(Whereupon, the witness continued to read from that point, through line 11, page 4275, where he interpolated:)

And at this point I am saying in response to the question

by the United States Attorney that here again the witness started to read from a prepared, written statement.

120 (Whereupon, the witness continued to read from Government Exhibit 6, beginning with line 12, page 4275, and continuing through line 6, page 4276, at which point the following interruption occurred:)

Mr. Hitz: Excuse me. Let me interrupt for a moment. This is the testimony on Count One, Your Honor. I think I might point out as we go along what count——

The Court: Very well.

You may proceed.

(Whereupon, the witness continued to read, beginning with line 7, page 4276, and continuing through the last line before the afternoon session heading, near the bottom of page 4278.)

121 By Mr. Hitz:

Q. I would like to ask you, so that the fact is in evidence in this case directly from you as a witness: Did Mr. Rumsey give public testimony to the committee to the effect that all of the persons about whom you asked Mr. Watkins and concerning whom he refused to answer, that those persons were engaged in Communist activity to the knowledge of Rumsey?

Now, number one, do you understand my question?

122 A. Yes.

Q. Will you answer it?

A. To the best of my recollection, yes.

Q. And that was public testimony given to the committee by Mr. Rumsey?

A. Yes.

Cross-examination.

By Mr. Sachs:

Q. Would you give again, Mr. Kunzig, the dates of the period, during which you served as counsel of this committee?

A. I believe I started on March 5th of 1953, the 83rd Congress, and I left the payroll of the House Committee on Un-American Activities February the 28th of this year.

Q. What, in general, were your duties as counsel
123 of the committee? Was it counsel of or counsel for the committee?

A. I don't think it matters. I don't know that there was a difference.

Q. All right, what were your duties, in general?

A. To handle the hearings of the committee, to act as counsel at hearings of the committee, to advise the committee itself on all legal matters.

Q. Did you make arrangements for hearings?

A. Sometimes I may have made them. Usually, they were made by some of the other committee staff, such as the Clerk.

Q. Under your supervision?

A. No, we didn't operate under that type of a system. There was a—it varied at different times, but there was largely an overseeing group, and we each had our responsibilities.

Q. Was the selection of witnesses to be called, your responsibility?

A. That varied at different times. Largely not my specific responsibility, although I might have been in on a group discussing who should be called.

Q. Was the issuance of subpoenas your responsibility?

A. No, the issuance of subpoenas, including all subpoenas during the entire two years, I had nothing to do with at any time.

124 Q. Why did you smile so about that point?

A. No comment.

By Mr. Hitz:

Q. How about the granting of extensions of time as to subpoenas; was that your responsibility?

A. Since at that point there were usually lawyers in the case, lawyers for the defendants—pardon me—lawyers for the witnesses, I usually then would be called by one of the attorneys for a witness, and then usually, after conferring with the chairman, would grant the extension.

Q. And was that done by letter or wire at times?

A. Sometimes letter, sometimes wire. Sometimes it was agreed over the telephone, but there was usually always a confirming wire.

. . . . . .

125 By Mr. Sachs:

. . . . . .

Q. Let me diverge for just a moment to the hearings in Chicago which you testified about in response to Mr. Hitz's questions. Part 1 of the Chicago hearings. I think it is. I don't know if it is in evidence or not. Do you have
126 it before you, the statement that Mr. Velde made at the commencement of the Chicago hearings on March 15th?"

The Court: I think he read it in evidence, didn't he?

A. I have it in front of me, yes.

By Mr. Sachs:

Q. Mr. Hitz asked you some questions about Mr. Velde's statement at that time, and as I remember, you spoke extemporaneously. Would you be good enough now to read into the record what Mr. Velde said at the commencement of that hearing.

Mr. Hitz: Is this the same passage that I asked about and you objected to it when we attempted to get it in? I think it is. I don't have a copy, however. Your recollection is good on that, I am sure.

Mr. Sachs: Yes. Yes, that is right. And I think my objection was overruled, and then the witness was allowed

as I remember, to paraphrase what was said at that time. Now I am asking him to read what was said, since my objection was overruled. And I don't intend by this to waive my objection, but I just want to get the record straight.

The Court: Do you have the statement there?

The Witness: Right here.

The Court: You may read it.

By Mr. Sachs:

Q. You are reading, are you, from page 4165?

127 A. Yes, sir.

"Mr. Velde: The committee will be in order. I should like to make an opening statement regarding our work here in the city of Chicago. The Congress of the United States, realizing that there are individuals and elements in this country whose aim it is to subvert our constitutional form of government, has established the House Committee on Un-American Activities. In establishing this committee, the Congress has directed that we must investigate and hold hearings, either by the full committee or by a subcommittee, to ascertain the extent and success of subversive activities directed against these United States.

"On the basis of these investigations and hearings, the Committee on Un-American Activities reports its findings to the Congress and makes recommendations from these investigations and hearings for new legislation. As a result of this committee's investigations and hearings, the Internal Security Act of 1950 was enacted.

"Over the past fifteen years this committee has been in existence, both as a special and permanent committee, it has made forty-seven recommendations to the Congress to insure proper security against subversion. I am
128 proud to be able to state that of these forty-seven recommendations, all but eight have been acted upon in one way or another. Among these recomemndations which the Congress has not acted upon are those which provide that witnesses appearing before congressional committee be granted immunity from prosecution on the information they furnish.

"The committee has also recommended that evidence secured from confidential devices be admissible in cases involving the national security. The executive branch of Government has now also asked the Congress for such legislation. A study is now being made of various bills dealing with this matter.

"The Congress has also referred to the House Committee on Un-American Activities a bill which would amend the National Security Act of 1950. This bill, if enacted into law, would provide that the Subversive Activities Control Board should, after suitable hearings and procedures, be empowered to find if certain labor organizations are in fact Communist-controlled action groups. Following this action, such labor groups would not have available the use of the National Labor Relations Board as they now have under the provisions of the Labor-Management Relations Act of 1947.

129 "During the first session of this 83rd Congress, the House Un-American Activities Committee has held hearings in Los Angeles and San Francisco, California; Albany and New York City, New York; Philadelphia, Pennsylvania, and Columbus, Ohio. We are here in Chicago, Illinois, realizing that this is the center of the great midwestern area of the United States.

"It cannot be said that subversive infiltration has had a greater nor a lesser success in infiltrating this important area. The hearings today are the culmination of an investigation that has been conducted by the committee's competent staff and is a part of the committee's intention for holding hearings in various parts of the country.

"The committee has found that by conducting its investigations and holding hearings in various parts of the country, it has been able to secure a fuller and more comprehensive picture of subversive efforts throughout our nation. Every witness who has been subpoenaed to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States."

Now, that is roughly where it ends. Do you want to
130 go on? The rest relates to other witnesses.

By Mr. Sachs:

Q. Is what you have just read the basis for the testimony you gave in reply to Mr. Hitz's questions, as to what Mr. Velde said to be the purpose of the Chicago hearing?

A. Yes.

Mr. Sachs: Then, if Your Honor please, I move to strike at this point what the witness testified to on direct examination in paraphrasing what he has just read, to the extent that what he said may be additional to or inconsistent with his statement.

The Court: Very well, anything that is inconsistent with the statement, I will strike.

Mr. Hitz: But who is going to determine that?

The Court: The court.

Mr. Hitz: I agree it should, Your Honor.

Mr. Sachs: Does Your Honor also rule that anything additional to the statement will be stricken?

The Court: Yes.

Mr. Hitz: Very well.

By Mr. Sachs:

Q. Now, Mr. Kunzig,——

Mr. Hitz: Which purported to come from Mr. Velde's statement.

131 The Court: I beg your pardon?

Mr. Hitz: Which purported to come from Mr. Velde's statement.

The Court: That is right.

Mr. Hitz: Oh, I think that is quite correct. That is the reason I wanted to get it in, having been read by Mr. Kunzig, in the first place.

Mr. Sachs: I'm sorry, I didn't hear what Mr. Hitz said.

Mr. Hitz: I wanted it to be the statement as given by Mr. Velde. That is the reason I wanted to get it in there in the first place.

Mr. Sachs: I take it that essentially we are all in agreement, then.

Mr. Hitz: I think so.

The Court: Yes.

Mr. Sachs: That the only proper testimony as to the announced purpose of the hearing as given at Chicago is the actual statement that Mr. Velde gave.

Mr. Hitz: Oh, I think so, certainly.

The Court: That is right.

Mr. Sachs: And we intend that our objection to it still be in force, but if we are overruled, we are at this stage.

By Mr. Sachs:

132 Q. I want to ask you a few other questions, Mr. Kunzig.

I believe you said a moment ago, in answer to my question, that you had prepared the examination of Mr. Watkins which took place on April 29th.

A. Well, let me say that I worked together with the committee staff in getting ready for it, yes.

Q. You prepared yourself to ask the questions?

A. That is right.

Q. You made the study that was necessary of the subject matter and of his statement, so that you could ask him the question. Is that right?

A. That is roughly correct, yes.

Q. Are you familiar with the statement made in the Government's memorandum of points and authorities in support of the motion to quash, as follows:——

Mr. Hitz: Will you give me the page?

Mr. Sachs: Page 6.

By Mr. Sachs:

Q. —and I am quoting:

"It would be"——

speaking of our subpoena in this case.

"It would be oppressive, because the clerk of the committee has informed Government counsel that it

would take three research analysts approxi-
133 mately two weeks to assemble the documents sought, and would take a truck to bring it to the courthouse."

Mr. Hitz: Your Honor, I object on two grounds: first, it is beyond the scope of the direct examination. It isn't material. If it is material, it should be brought out by Mr. Sachs in his case. Finally, it is incompetent, coming from this witness.

The Court: What is the purpose of the question, Mr. Sachs?

Mr. Sachs: The witness has testified that he prepared himself to examine Mr. Watkins, and I am asking this as a question preliminary to my next question, which will have to do with what preparation he made.

The Court: I will sustain the objection.

By Mr. Sachs:

Q. Well, I ask you this, then, Mr. Watkins,——

A. Kunzig.

Q. Mr. Kunzig. Are you familiar with the, did you examine the files of the committee relative to the people that Watkins was questioned about, and relative to Watkins himself?

Mr. Hitz: Excuse me, please, sir. I object on the ground that, first, it is beyond the scope; second, it is not material. If it is material, it is part of his case in defense. And finally, it means to explore into confidential matter
134 which we have not gone into.

The Court: What is the materiality of what preparation the witness made in preparing to examine Mr. Watkins?

Mr. Sachs: We want to know—May we approach the bench?

The Court: Well, we don't have a jury.

Mr. Sachs: I would just as soon the witness didn't know, if he doesn't already.

(At the bench:)

Mr. Rauh: This is part of our argument from yesterday, Your Honor. We want to show that the committee brought Watkins here when it already had the information in its own files, and we want to show that this witness did not examine this information.

The Court: What do you say, Mr. Hitz?

Mr. Hitz: Well, first of all, it is beyond the scope of the direct. You must put that in in your case in chief, when your testimony goes in, when your time comes. As to using this witness, if you care to make him your witness, we will not object to that procedural fact. We think, however, that the testimony, if elicited under those procedural circumstances, that is, this witness being called as a defense witness now, would be inadmissible, because it would be immaterial, because the defense now attempt to assert by the use of this evidence that if the committee has the information already, it can't get it again from this witness.

135

That has been decided in the Lawson case as not being a proper defense, and that an exclusion of evidence directed to that purpose was not an improper exclusion of evidence.

I cited to the court yesterday that portion of the appellant's brief in the Court of Appeals which raised that point as an assignment of error. It was not decided as such in the opinion by mentioning it, but it was hidden as one of those points upon which the court said there need not be discussion because discussion was not merited. But it was raised and considered by the Court of Appeals.

We have got, of course, the direct trial court's decision, which is advisory, of course, only, to Your Honor, by Judge Curran, deciding that point. But logic and reason would clearly indicate that such a ruling was the one which should prevail. Because who is the witness to say to the committee, "When you ask me this question, although I don't know what you know, I will pass judgment that what you know is all you can find out, because I won't tell you, because I am saying you already have the information," although he couldn't have the information, he couldn't know what the committee knows.

It is just ridiculous to say, "You have got all the information you could ever have on this subject of infiltra-
136 tion into this union, so far as I am concerned." It is just preposterous.

Mr. Rauh: If Your Honor please, we only have a very limited question we would like to ask. Maybe Mr. Hitz would concede it. That is, Did Mr. Kunzig not first examine his files, this alleged truckload of files, before he questioned the defendant?

And I don't want to re-argue yesterday, Your Honor was very kind in hearing us yesterday,——

The Court: I was wondering if we were going to hear it again today.

Mr. Rauh: You are not, I can assure you, Your Honor. This is a different, this is a point that is related, but it is not on the exposure point. It is limited to the one question that they cannot go and haul a witness out of Rock Island, Illinois, without examining their files first to determine whether they have the information.

The Court: I think I will permit the question. You are limiting it to that question, now?

Mr. Rauh: Yes.

Mr. Hitz: Well, I would like to make—— Well, I have already made my objection.

(In open court:)

Mr. Sachs: Will you read the question, please?

(Whereupon, the reporter read the pending ques-
137 tion, which appears on page 133.)

By Mr. Sachs:

Q. This question, of course, relates to prior to the examination of Watkins.

Now will you answer the question?

A. To the best of my recollection, I didn't usually look or examine voluminous files that the committee may have, no. I would have gotten that information after discussion with investigators.

Q. Would you say, then, that at the time you examined

Watkins, you had in your knowledge the information in the files of the committee, relative to Watkins and the people you questioned him about?

Mr. Hitz: We object on the same ground. It is beyond the scope, it is immaterial, and it delves into matters that we did not go into, of a confidential character.

The Court: Objection overruled.

A. I probably had the basic information in my knowledge, yes.

By Mr. Sachs:

Q. You say you probably did have it in your knowledge?

A. Or in some sort of notes of some kind before me, yes.

Q. Do you know what information is in the committee's files relative to the people you questioned Watkins about, and relative to Watkins?

138

A. Well, I don't know as I could relate that without looking, I don't know, and I don't have any knowledge today what is in the committee's files about this, except what is public testimony.

Q. Well, did you know at the time you questioned Watkins?

A. You see, a great deal, a large part of it was public testimony.

Q. Mr. Kunzig, if you can, I would like for you to answer yes or no, and then if you want to explain, you can. If you can't answer yes or no, then it is all right.

A. I don't think I can answer yes or no to that question. I could have had some knowledge, yes, based upon a briefing and study with various investigators. A lot of material came from public testimony which was available to everybody—yourself, myself, anyone.

Q. My question is really quite a simple question: Did you know, when you examined Watkins, the information in the committee's files relative to the people you asked him about, and relative to him?

A. I would have known what I was briefed by investigators. Whether that is all the information, of course, does not lie within my knowledge.

Q. When were you briefed by the investigators?

139 A. I have no idea. Sometime prior to the hearing.

Q. Do you remember being briefed by the investigators?

A. I remember, I was always briefed by investigators, so it must have taken place in this case.

Q. Do you remember specifically that you were in this case?

A. Yes, I do recall being——

Q. Do you remember who the investigators were?

Mr. Hitz: Excuse me,——

The Court: Yes, I will sustain the objection.

By Mr. Sachs:

Q. Do you remember where the investigation took place?

Mr. Hitz: Object.

The Court: Sustained.

By Mr. Sachs:

Q. Do you remember if you were briefed in writing or orally?

Mr. Hitz: Object.

The Court: Sustained.

By Mr. Sachs:

Q. Do you remember how long the briefing took?

Mr. Hitz: Objection.

The Court: Sustained.

Mr. Sachs: May it please Your Honor,——(Breaking off and smiling)

140

By Mr. Sachs:

Q. Do you remember today the information that the investigators gave you?

Mr. Hitz: Object.

The Court: Sustained.

Mr. Sachs: Well, let me just ask this question, then, on that point.

By Mr. Sachs:

Q. Did you know, when you asked Watkins, all the information that the committee had in its files concerning the people you questioned Watkins about, and concerning Watkins?

Mr. Hitz: Object.

The Court: I overrule that.

A. I believe I have already answered that question and said I would know what I was briefed by the investigators. Whether that was all the information in the committee's files, I wouldn't know, because I don't know what is in the mind of the investigator.

By Mr. Sachs:

Q. And you still wouldn't know today if at that time you had all the information in the committee's files, would you?

A. No, I wouldn't know.

141 Q. ——about these people?

A. I wouldn't know any differently today, no.

* * * * * * *

148 Mr. Sachs: Will you mark this Defendant's 1, for identification.)

(Subpoena was marked as Defendant's Exhibit 1 for identification.

Mr. Sachs: And this as Defendant's 2 for identification.

(Telegram was marked as Defendant's Exhibit 2 for identification.)

The Deputy Clerk: Marked Defendant's Exhibits Numbers 1 and 2 for identification.

By Mr. Sachs:

Q. I show you Defendant's 1 for identification and ask you if you can, if you know what it is, if you can identify it.

A. It looks like a subpoena of the House Committee on

Un-American Activities, summoning John Watkins.

149 Q. I show you now Exhibit 2 for identification and ask you if you know what that is.

A. It looks like it was a telegram of postponement from Mr. Velde to Mr. Watkins, postponing the hearing from April 26th to the 29th.

* * * * * * *

170 Mr. Rauh: The defendant respectfully moves to dismiss the complaint under Rule 21 or enter a judgment of acquittal under Rule 29, on the following grounds: one—and I may say, at the beginning of item one, that Judge Pine has already ruled on this matter unfavorably to us, but we feel that the matter should be presented to Your Honor.

* * * * * * *

One: The indictment is void and illegal, in that more than eleven members of the grand jury which voted this indictment were biased and prejudiced against the defendant and unable to exercise an independent judgment, by reason of the fact that they, or close associates, including relatives, were employed by or were seeking employment with the United States or the District of Columbia Government; because of the seven years of operation of the loyalty and security programs, the said grand jurors feared the appearance of sympathetic association or any action which might be considered left-wing or Communist, to such

171 an extent that they were prevented from casting their votes impartially, which fears amounted to an actual bias against the defendant.

The facts on which this motion are based are more fully set forth in the affidavit of myself, executed on January 10, 1955. This motion was denied by Judge Pine on February 7, 1955, but is renewed here in the belief that Your Honor might desire to hear argument thereon.

* * * * * * *

192 Point number 11: Congressional committees must act "with the least possible power adequate to the

end proposed," citing Anderson against Dunn and Marshall against Gordon. I am not going to bore Your Honor with a repetition of yesterday's argument. You needn't fear on that score.

The Court: I enjoy it.

Mr. Rauh: Thank you, sir. I would just like to say here that we believe the point is applicable even without the proof that we sought and that Your Honor denied us in quashing the subpoena. But apart from that, we feel that on the Government's case, the matter has now been proven. Mr. Hitz conceded, indeed he vehemently proposed, in his written brief, that they had a truckload; in his oral statement yesterday, a truckload, maybe two, of information
193 concerning Mr. Watkins and these people. This morning on the stand, Mr. Kunzig said that he didn't know what was in the committee's files.

It is perfectly clear that nobody sought, through this truckload or two truckloads of information which would take three analysts two weeks to put together—if it would take that long to put it together, heaven knows how long it would take to analyze it.

We say that you cannot call Mr. Watkins by compulsory process from Rock Island, Illinois, and put him before a committee, force him to answer questions, when that material may be—and all we have proved now is "may be," because we have not, our subpoena was denied—when that material may be in the files of the committee.

That committee, to act with the least possible power, must look first inside themselves and their files, and then take an American citizen and force him to come and make compulsory testimony.

Point number 12: If the questions were within the scope of the committee's authorizing resolution, the matter under inquiry and the questions asked are unconstitutional because in violation of the doctrine of separation of powers. This is our fundamental exposure argument. That, too, I shall not repeat after yesterday.

194 I would like to say just one point here on the Government's proof on this point. The Government apparently rests on the pertinency of the questions asked the

defendant, on their face. We say those questions on their face show something else, a purpose of exposure.

If they had asked the defendant Watkins, when he refused to say whether Harold Fisher was a member of the Communist Party,

> "Didn't you and he do something in that Party to help the Communist Party? Didn't you and he do something to help the labor movement—to help the Communists inside the labor movement? Didn't you and he try to affect the labor movement? Didn't he and you try to do this or do that?"

it would have shown some indication of wanting information for operating purposes.

The questions on their face, if Your Honor please, show an interest only in listing people. Why, they made one question, and they put almost thirty people in one question. What they were trying to get was a list of Americans who had at one time been in the Communist Party.

We say that is not a legislative function. We shall, in our direct case, if this motion is denied, make much fuller proof on this exposure point. But insofar as the questions on their face are before Your Honor, we feel the
195 matter has already been shown.

Point number 13 is really a continuation of Point number 12. If in fact this is an exposure purpose, if in fact it is an attempt to build lists, then it is also a bill of attainder in violation of Article I, Section 9 of the Constitution, and the Lovett case. I shall not, however, argue that, because it is really a reverse coin of the previous argument.

Point number 14 is the First Amendment argument. I am sure Your Honor is familiar with it. The point has never been passed on by the Supreme Court of the United States. The reason for avoiding it in the Rumely case is what brought that narrow construction. It was up again last Monday, when the Quinn and Emspak cases were up, and it is more than somewhat in this case.

However, I would be less than frank if I did not say that on this point, as distinguished from some of the others,

there are Court of Appeals decisions which hold against us.

Point number 15: If the questions asked are held to be within the scope of the committee's authorizing resolution Section 192, read in the light of the Un-American Activities Committee's unlimited authority, is too vague and indefinite for a criminal statute, and in violation of the Fifth and Sixth Amendments.

This is the Cohen Grocery case and the Lanzetta
196 case with which Your Honor is familiar.

We would like to point out here that the committee's actions accentuated rather than minimized the vagueness and indefiniteness. You hear the testimony. There was no written direction to the committee, setting up any question—to the subcommittee, setting up any question under inquiry. The subcommittee really failed to state anything that could be called a question under inquiry. It made a vague reference to Chicago, and in Chicago, if Your Honor will look at it, you will see that there was nothing there that could be definite enough to know what was pertinent.

* * * * * * *

263 The Court: * * * I think that disposes of the major items that you raised and I will deny both motions of the defendant.

* * * * * * *

265 Mr. Sachs: May it please the Court, at this time the defense will commence the presentation of its case, its motions having been overruled, and we offer into evidence a subpoena served on the defendant which has been marked for identification Defendant's Exhibit No. 1.

We understand that the Government stipulates with us that this is the original subpoena which was served on the defendant.

266

* * * * * * *

Mr. Hitz: Right.

The Court: I will receive it.

The Deputy Clerk: No. 1 in evidence.

(The document marked Defendant's Exhibit No. 1 for

267 Mr. Sachs: This is called, "Original."

"By authority of the House of Representatives of the Congress of the United States of America.

"To the United States Marshal, Dubuque, Iowa.

"You are hereby commanded to summon John T. Watkins to be and appear before the Committee on Un-American Activities, or a duly authorized subcommittee thereof, of the House of Representatives of the United States, of which the Hon. Harold H. Velde is chairman, in their chamber in the city of Washington, Room 225-A, Old House Office Building, on Monday, April 26, 1954, at the hour of 10:30 a. m., then and there to testify touching matters of inquiry committed to said Committee; and he is not to depart without leave of said Committee.

"Herein fail not, and make return of this summons.

"Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, this 6th day of April, 1954.

Harold H. Velde, Chairman.

"Attest: Lyle O. Snader."

We next want to state to the Court that Mr. Hitz and we have stipulated that our Exhibit No. 2, which has been identified, is the telegram which was sent to and received by John T. Watkins pursuant to a request for continuance of the hearing. We would like this to be put in evidence on the same point.

268 Mr. Hitz: We do not object in view of the Court's ruling on the other matter.

The Deputy Clerk: Defendant's No. 2 in evidence.

(The document marked Defendant's Exhibit No. 2 for identification was received in evidence.)

Mr. Sachs: The body of this subpoena, if Your Honor please, says:

"Under continuing authority of subpoena served upon you April 13, 1954, your appearance before the Committee on Un-American Activities is hereby post-

poned from April 26 to Thursday, April 29, 1954, 10:30 a. m.

* * * * * * * *

271 Mr. Rauh: May it please the Court, the first item we have is in the nature of an offer of proof.

On May 16 the defense served subpoenas on the clerk of the House of Representatives and the clerk of the Committee on Un-American Activities of the House requesting the information in the files of the committee on defendant, on each of the persons about whom the defendant was asked and declined to answer.

The Government moved to quash the subpoenas, and Your Honor has granted that motion as well as denying defendant's request that the Court rule that the documents specified in the subpoenas issued in this case are evident and material to defendant's case and to request the House to permit the requesting and copying of these documents.

Defendant moved to dismiss the indictment on the grounds of failure to obtain this information, depriving him of the right to make a full defense guaranteed by the Fifth and Sixth Amendments of the Constitution, and Your Honor denied that motion.

We would now as part of defendant's case like Your Honor to reconsider the rulings on these three mo-
272 tions as a part of our case. I do that prior to making our offer of proof of what we would have shown.

The Court: I deny the motion.

Mr. Rauh: We would like at this time to make an offer of proof of what we would have shown through the material covered by the subpoenas.

We would have shown and now offer to show through the subpoenaed material that the committee had in its files all the information which it sought to elicit from the defendant about him and each of the other thirty individuals referred to and, in fact, a great deal more such information.

Having shown that the committee had all the information in its files which it sought to elicit from defendant it would follow that the committee had no legislative purpose in its questions to defendant but rather had the sole purpose of harassing defendant and exposing him to the contempt of his

labor associates by forcing him to inform on past associates and exposing to public contempt through the mouth of the defendant the persons about whom he was questioned.

Furthermore, the same proofs that the committee had in its files, all the information which it sought to elicit from defendant, would have demonstrated that the committee was not acting with the least possible power, as required by the Supreme Court of the United States, but was in fact seeking to compel testimony from the defendant
273 which it had already obtained from other sources.

If Your Honor please, by the same token as your rulings on those motions, it would appear to be your view that the information which the committee had about these thirty people which was public would also not be relevant because if it is not relevant, what they had privately and what we don't know about, I presume it is Your Honor's view that what they had publicly and we do know about is also irrelevant.

The Court: That is right.

Mr. Rauh: Therefore, in order to avoid burdening Your Honor with reading the material we would now like to make an offer of proof as part of what we would have shown through the subpoenas of the material that is public, because obviously they would have included both the public and the private material.

Therefore, instead of bothering to read this material we have gotten together out of their reports and hearings, we would simply like to offer this as an exhibit to be treated as our offer of proof.

The Court: Any objection, Mr. Hitz?

Mr. Hitz: Yes, I do object on the same grounds.

The Court: Objection sustained.

Mr. Rauh: We now proffer this as an offer of proof. I would suggest for simplicity's sake we mark it as an exhibit rather than typing it all into the record.

274 Mr. Hitz: I think so. Is it hearings or reports, or both? Could you characterize it?

Mr. Rauh: This is both hearings and reports and contains the public information we were able to find on the thirty individuals.

• • • • • • •

The Court: * * * Mark it for identification No. 4 but not as received.

275 (The documents referred to were marked for identification as Defendant's Exhibit No. 4.)

* * * * * * *

Mr. Rauh: May it please the Court, we have prepared a great deal of information going to the question that the House Un-American Activities Committee asserted a two-fold purpose and power, one dealing with legislation and one dealing with exposure.

We do not assert and never have—and I want to disassociate myself from any defendants that Mr. Hitz keeps associating us with—taken the position that the House committee always went beyond its authority and has no legislative pertinency.

The material that we have collected is excerpts from House committee reports, House committee hearings, Congressional Record statements and newspapers, going to the point that the House committee asserts an independent power all apart from legislation to expose persons to public knowledge.

Now, Mr. Hitz has stipulated with us as to the fact that the materials we have collected were in fact stated by
276 the committee, by the committee members, either in hearings, in reports, on the Congressional floor, or in newspapers. However, he has not stipulated with us as to the materiality or relevance of this material, and since it is very bulky I suppose before I read this entire material to Your Honor we had better have a ruling on the relevancy.

It is offered, if Your Honor please, and our belief is that we are entitled to show in this particular case there was a purpose of exposure rather than of legislation; and as relevant to proof of exposure here we offer detailed information of the assertion by the committee of a power of exposure independent of legislation.

It is that material as to which we have entered into a written stipulation as to its authenticity, and if Mr. Hitz would now care to be heard on the question of whether I should be allowed to read this then we can get to it.

Since this has been a major matter and Your Honor knows our views thoroughly on the point of the exposure, I just rest and say that I would like to read this material to the Court.

Mr. Hitz: We object to its admissibility because we say it is not material to any issue in the case, whether it be the Government's or the defense's case.

As to whether or not Mr. Rauh desires to read it, having made it as an offer of proof on a subject matter on
277 which I think the Court has already ruled adversely to him is entirely up to Mr. Rauh. Personally, I think it ought not to be read.

The Court: You don't want to read it unless I am going to admit it.

Mr. Rauh: Not if you rule it is irrelevant. I felt that the previous rulings quite went to the point that we did not have a right to prove exposure.

The Court: I don't think proving statements made by committee members that they asserted the right to prove exposure tends to prove exposure in this case.

Mr. Rauh: To make it clear to Your Honor what these statements are, there are some by the committees themselves not just members, but some by members.

The Court: Do any of them relate to the Watkins case?

Mr. Rauh: No, sir.

The Court: I will sustain the objection.

Mr. Rauh: At this time, if Your Honor please, we would like to, in the least painful method possible, make a second offer of the material.

We have a stipulation, if Your Honor please, wit. Mr. Hitz, as to the nature of the documents. The documents are of four types.

The first are the documents listed in Schedule A which have been initialed by counsel for both parties. They are the official publications of the committee, true and
278 accurate transcriptions of the hearings and reports, and we are offering only the marked parts of these documents. The marked parts have been shown to Mr. Hitz and he is aware of them.

I will put the whole exhibit together and then we can mark them all together when I finish describing these.

The Court: Is it your thought that they should be handled the same way that the other exhibit was handled?

Mr. Rauh: Precisely.

The Court: Treat it as an exhibit for identification but not received in evidence, the record to show that it was an offer of proof.

Mr. Sachs: I was worried until you said it would be treated as an offer of proof. That satisfies us.

Mr. Hitz: Will this bear additional defense exhibit numbers?

Mr. Rauh: Mrs. Zarky, who has handled most of these papers, feels that for future use possibly it would be easier for everybody if we made the stipulation an exhibit number and then each of the four schedules.

The Court: A separate number?

Mr. Rauh: A separate number.

Mr. Hitz: Do you plan to offer the stipulation in evidence?

Mr. Rauh: I do.

279 Mr. Hitz: It is my suggestion that you give that a separate number, and to that I will not object. I think that should go in evidence. I think the documents under it I will object to. I think that will make a better record, perhaps.

Mr. Rauh: I would like to offer, then, a stipulation between Mr. Hitz and Mr. Sachs as our exhibit, No. 5, I believe it is.

(The document referred to was marked for identification as Defendant's Exhibit No. 5.)

Mr. Hitz: We do not object to the stipulation.

The Court: It will be received.

(The document marked as Defendant's Exhibit No. 5 for identification was received in evidence.)

Mr. Rauh: As exhibit for identification No. 6 I will offer the Schedule A referred to in the stipulation, each of the documents referred to in Schedule A to be numbered consecutively 6-A, B, C, and so on.

The Court: Alphabetically?

Mr. Rauh: Yes, 6-A, B, C, and D, until the end.

(The documents referred to were marked for identification as Defendant's Exhibits 6 and 6-A to 6-O, inclusive.)

Mr. Rauh: Our offer of proof here is not the entire documents but the marked portions of them, which have been made available and shown to Mr. Hitz.

Mr. Hitz: Your Honor, I have seen what is now Defendant's Exhibit 6, with letters, and we object to it as
280 being immaterial to any proper issue of the case.

The Court: Objection sustained.

Mr. Hitz: That will read Defendant's Exhibit 6, plus letters, for identification, to be understood as an offer of proof. Is that the way the record should read?

Mr. Rauh: That is my understanding.

We offer as Defendant's Exhibit 7 the excerpts from the documents included in Schedule B of the stipulation which is Exhibit 5 in evidence, which contains material which we were unable to get a sufficient number of copies to treat it in the same way as Exhibit No. 6. So this will become Exhibit No. 7 for identification, objected to by the Government, and offered as proof by the defense.

The Deputy Clerk: Marked Defendant's Exhibit No. 7 for identification.

(The document referred to was marked as Defendant's Exhibit No. 7 for identification.)

The Court: The objection is sustained.

Mr. Rauh: Exhibit No. 8, material referred to in Schedule C of Exhibit No. 5, contains statements on the floor of Congress, of course by Congressmen, concerning the purpose of the committee. It is offered as Exhibit No. 8 for identification.

The Deputy Clerk: Defendant's No. 8 for identification.

281 (The document referred to was marked for identification as Defendant's Exhibit No. 8.)

Mr. Rauh: I take it the exhibit is objected to, and then it is offered as an offer of proof.

The Court: Do you object?

Mr. Hitz: I do object to it.

The Court: Objection sustained.

Mr. Rauh: Exhibit No. 9, and our final exhibit, if Your Honor please, is the material referred to in Schedule D of Exhibit 5, press statements of members of the committee, and it is offered as Exhibit No. 9 for identification.

The Deputy Clerk: Defendant's Exhibit No. 9 for identification.

(The document referred to was marked for identification as Defendant's Exhibit No. 9.)

Mr. Rauh: I presume it is objected to, and then it is offered as proof.

Mr. Hitz: I do object.

The Court: Objection sustained.

* * * * * * * *

285 Mr. Rauh: Since we did not offer any substantial amount of evidence and since we did have a substantial amount of evidence included in these points, we would simply like to renew our motions of yesterday.

The Court: It seems to me that under the authorities the Court is bound to hold the defendant guilty—under my view of the authorities, I will put it that way—and I do so find.

* * * * * * * *

GOVT. EXHIBIT No. 1

Filed July 18, 1955. Harry M. Hull, Clerk

H. Res. 2

In the House of Representatives, U. S.:

January 3, 1953.

Resolved, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled; that Joseph W. Martin, Junior, a Representative from the State of Massachusetts, has been elected Speaker; and Lyle O. Snader, a citizen of the State of Illi-

nois, Clerk of the House of Representatives, of the Eighty-third Congress.

Attest:

LYLE O. SNADER,
Clerk.

GOVT. EXHIBIT No. 2

Filed July 18, 1955. Harry M. Hull, Clerk

Lyle O. Snader,
Clerk

Office of the Clerk

House of Representatives

Washington, D. C.

I, Lyle O. Snader, Clerk of the House of Representatives, do hereby certify that the following Members constitute the Committee on Un-American Activities of the House of Representatives as is evidenced in the Journal of the House of Representatives of January 19, 1953: Harold H. Velde, Chairman, of Illinois, Bernard W. (Pat) Kearney, of New York, Donald L. Jackson, of California, Kit Clardy, of Michigan, Gordon H. Scherer, of Ohio, Francis E. Walter, of Pennsylvania, Morgan M. Moulder, of Missouri, Clyde Doyle, of California, and James B. Frazier, Jr., of Tennessee.

In witness whereof I hereunto affix my name and the seal of the House of Representatives, in the City of Washington, District of Columbia, this eleventh day of May anno Domini one thousand nine hundred and fifty-four.

LYLE O. SNADER,
Clerk of the House of Representatives.

GOVT. EXHIBIT No. 3

Filed July 18, 1955. Harry M. Hull, Clerk

Lyle O. Snader
Clerk

Office of the Clerk

House of Representatives

Washington, D. C.

I, Lyle O. Snader, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of House Report 1579 of the Eighty-third Congress, second session, as submitted to the House of Representatives May 11, 1954, by Mr. Velde, of Illinois, from the Committee on Un-American Activities and noted in the Journal of the House of Representatives of May 11, 1954, Eighty-third Congress, second session.

In witness whereof I hereunto affix my name and the seal of the House of Representatives in the City of Washington, District of Columbia, this eleventh day of May anno Domini one thousand nine hundred and fifty-four.

LYLE O. SNADER,
Clerk of the House of Representatives.

Filed July 18, 1955. Harry M. Hull, Clerk

PROCEEDINGS AGAINST JOHN T. WATKINS

MAY 11, 1954.—Ordered to be printed

Mr. VELDE, of Illinois, from the Committee on Un-American Activities, submitted the following

REPORT

Citing John T. Watkins

* * * * * * *

9 Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to said John T. Watkins, relative to the subject matter which, under Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, the said committee was instructed to investigate, and the refusal of the witness to answer questions, namely:

Do you know Harold Fisher to be a member of the Communist Party?

Did you know Charles Hobbe to be a member of the Communist Party?

Did you know Henry Mack to be a member of the Communist Party?

Do you know Ernest DeMaio to be a member of the Communist Party?

Do you know him [Ernest DeMaio] [1] to have ever been a member of the Communist Party?

Did you know Charles Killinger to be a member of the Communist Party?

Mr. Watkins, I am going to read a list of names to you. I will read it slowly—and I am going to ask you—these are all names identified as members of the Communist Party by Mr. Rumsey in his testimony in Chicago. I am going to read the list and ask you whether you ever knew any of these people to be members of the Communist Party: Lee Landbaker; Morris Childs; Dorothy Hillyerd; Theo Kruse; Charles Lawson; Olaf Lidel, L-i-d-e-l; Sarah Levine; Murray Levine; Harriet Leuth, L-e-u-t-h; Herbert Marsh; Ajay Martin; Harold Metcalf; John Milkevitch; Grant Oakes; Joe Ruick, R-u-i-c-k, or alias Joe Webber; Frank Rogers; Arthur Saunders; Seymour Siporin; Joseph Stern; George Teeple, T-e-e-p-l-e; Ray Teeple; Donald Tieglan, T-i-e-g-l-a-n; Rex Wielock; John Wilson; Marie Wilson; Mrs. John Wilson. Do you know any of those names I just read to you to have been members of the Communist Party?

which questions were pertinent to the subject under inquiry, is a violation of the subpena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony, and places the said witness in contempt of the House of Representatives of the United States.

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[1] Words inside brackets added for clarity.

GOVT. EXHIBIT No. 4

Filed July 18, 1955. Harry M. Hull, Clerk

H. Res. 534

In the House of Representatives, U. S.:

May 11, 1955.

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of John T. Watkins to answer questions before the said Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said John T. Watkins may be proceeded against in the manner and form provided by law.

Attest:

LYLE O. SNADER,
Clerk.

GOVT. EXHIBIT No. 5

Filed July 18, 1955. Harry M. Hull, Clerk

Joseph W. Martin, Jr.
14th Dist., Massachusetts

The Speaker's Rooms

House of Representatives

Washington, D. C.

The United States Attorney,
District of Columbia.

The undersigned, the Speaker of the House of Representatives of the United States, pursuant to House Resolution 534, Eighty-third Congress, hereby certifies to you the refusal of John T. Watkins to answer questions before

the Committee on Un-American Activities of the House of Representatives authorized by Public Law 601, Seventy-ninth Congress, and House Resolution 5 of the Eighty-third Congress, as is fully shown by the certified copy of the report (House Report 1579) of said committee which is hereto attached.

Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, District of Columbia, this twelfth day of May 1954.

JOSEPH W. MARTIN, JR.,
Speaker of the House of Representatives.

Attest:

LYLE O. SNADER,
Clerk of the House of Representatives.

GOV'T. EXHIBIT No. 6

INVESTIGATION OF COMMUNIST ACTIVITIES IN THE CHICAGO AREA—PART 3

Filed July 18, 1955, Harry M. Hull, Clerk

Cr. 1153-54—U.S. v. Watkins

HEARING BEFORE THE COMMITTEE ON UN-AMERICAN ACTIVITIES, HOUSE OF REPRESENTATIVES

Eighty-Third Congress

Second Session

April 29, 1954

Printed for the use of the Committee on Un-American Activities

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 INVESTIGATION OF COMMUNIST ACTIVITIES IN THE CHICAGO AREA—PART 3

Thursday, April 29, 1954

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE
ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

Public Hearing

* * * * * * *

Mr. Velde: The Committee will be in order.

Let the record show that I have appointed as a subcommittee for the purposes of this hearing Mr. Scherer, Mr. Moulder, Mr. Frazier, and myself as chairman.

The hearing this morning is a continuation of the hearings which were held in Chicago recently by a subcommittee composed of Mr. Scherer, Mr. Moulder, and myself. At that time two witnesses were unavailable, at least the committee staff were unable to find these two witnesses to issue a subpena for them. Subsequent to that time I believe that these witnesses have been subpenaed, so we will proceed, Mr. Counsel, at the present time with the witnesses.

Mr. Kunzig: John T. Watkins. Will you step forward, please.

Mr. Velde: In the testimony you are about to give before this subcommittee do you solemnly swear you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Watkins: I do.

Mr. Velde: Be seated.

Testimony of John T. Watkins, Accompanied by His Counsel, Joseph L. Rauh, Jr., and Daniel H. Pollitt

Mr. Kunzig: Would you give your full name, please, sir?

Mr. Watkins: John T. Watkins.

Mr. Kunzig: I see that you are accompanied by counsel. Would counsel please state his name and office address for the record.

Mr. Rauh: My name is Joseph L. Rauh, R-a-u-h, Jr., 1631 K Street, and with me is Mr. Daniel H. Pollitt,

4266 P-o-l-l-i-t-t, of 1631 K Street. We are Washington counsel for the United Automobile Workers, CIO.

Mr. Kunzig: Are you also counsel here this morning for Mr. Watkins?

Mr. Rauh: In our capacity as counsel we are representing Mr. Watkins.

Mr. Kunzig: Would you give your address please, Mr. Watkins?

Mr. Watkins: 1244-22nd Avenue, Rock Island, Ill.

Mr. Kunzig: Rock Island, Ill.

Mr. Watkins: Yes, sir.

Mr. Kunzig: Would you give the committee a brief résumé of your educational background?

Mr. Watkins: My educational background was the eighth grade.

Mr. Kunzig: And where was that?

Mr. Watkins: Mount Sterling, Iowa.

Mr. Kunzig: Mount Sterling, Iowa?

Mr. Watkins: Right.

Mr. Kunzig: Now, would you give the committee a résumé of your employment background?

Mr. Watkins: My first job for salary was a part-time job as janitor of the school at the age of 10, for which I received $3 per month.

At 13 I was employed in farm work. Following that I was employed in a thread factory in Elgin, Ill.; later by the Illinois Watch Case Co. in Elgin, Ill.

Following that, approximately 1925, I was employed in farm work in the vicinity of Stronghurst, Ill., in which I spent several years.

Following that I was employed in construction work building hard roads, pipelines, and later, during the depression years of 1932, 1933, and 1934, I was employed in building a railroad for the Rock Island Railroad Co. around Trenton, Mo.

Following that I was employed on WPA, I believe it was, construction work, in the construction of locks at Burlington, Iowa.

I was later employed by International Harvester Co. at the Farm-All Works, and again later in construction

work in Muscatine, Iowa, on the Mississippi River, and leaving there, I went to work at the East Moline Works of the International Harvester Co. in East Moline, Ill.

I believe I did forget that in 1929 I also had worked a brief period for the John Deere Co., John Deere Plow Works, and for a few months for the International Harvester Co. as a service repairman in East Moline and Minneapolis, Minn.

Since the latter part of 1935 or the first part of 1936 my employment with the Harvester Co. continued until August of 1953. However, since 1942 I have been on leave from that job under the labor union contract and was employed by the Farm Equipment FE-CIO International Union, later by the UE, known as United Electrical, Radio and Machine Workers, and at the present time by the UAW-CIO, International Union.

Mr. Velde: Was your employment with UE following the merger with FE?

Mr. Watkins: That is correct.

(At this point Mr. Watkins conferred with Mr. Rauh.)

Mr. Watkins: I understood the question to say UE. Your question was in regard to UE, was it not?

Mr. Velde: Yes.

4267 Mr. Watkins: I had worked for FE-CIO prior to my employment with UE, but in 1949 I was employed by UE, in the latter part of 1949.

Mr. Velde: That was after they had merged with FE, however?

Mr. Watkins: That is right.

Mr. Velde: That is what my question was.

Mr. Kunzig: When did you leave the UE employment?

Mr. Watkins: In August 1953.

Mr. Kunzig: And when did you go with the United Auto Workers?

Mr. Watkins: In August 1953.

Mr. Kunzig: And you are presently with United Auto Workers?

Mr. Watkins: That is right.

Mr. Kunzig: Now, Mr. Watkins, on September 3, 1952, at hearings before this committee one Donald O. Spencer testified as follows:

Question: During the period that you were a member of the Farm Equipment Workers did you become a member of the Communist Party?

Mr. Spencer: Yes, sir.

Q. When did you become a member?

Mr. Spencer: In 1943, in October.

Question: How long did you remain a member of the Communist Party?

Mr. Spencer: Well, my dues were paid until the 1st of January 1946.

Question: Who recruited you into the Communist Party?

Mr. Spencer: Walter Rumsey, R-u-m-s-e-y encouraged me into the party with the endorsement and full knowledge of John Watkins.

Question: Is that John Watkins?

Mr. Spencer: Yes, sir. He was district vice president of the FE at that time.

Did you know Donald O. Spencer?

Mr. Watkins: I did.

Mr. Kunzig: Were you ever a member of the Communist Party?

Mr. Watkins: No.

Mr. Kunzig: Are you now a member of the Communist Party?

Mr. Watkins: No.

Mr. Kunzig: Did you have anything to do with recruiting into the Communist Party Mr. Spencer?

Mr. Watkins: I did not.

Mr. Kunzig: Did you ever recruit anybody into the Communist Party?

Mr. Watkins: I have not.

Mr. Kunzig: I will go on with the testimony.

Mr. Spencer: John Watkins, he approved my recruitment before I was admitted.

I will ask you now, did you approve the recruitment of Spencer before he was admitted to the Communist Party?

Mr. Watkins: Read your question again.

Mr. Kunzig: Mr. Spencer's testimony was that "John Watkins approved my recruitment before I was admitted."

My question to you is: Did you ever approve the recruitment of Spencer to the Communist Party before he was admitted?

Mr. Watkins: No, sir.

Mr. Kunzig: Now, the question was asked:

> Mr. Spencer, did you ever attend meetings in the home of John Watkins, Communist Party meetings?

And Spencer said: "No."

> Question: Were you acquainted with Catherine Hall, wife of John Watkins?
>
> 4268 Spencer: Yes, she wasn't the wife of John Watkins at that time, though. She was working in the office, the district office of FE-CIO in Rock Island at that time.
>
> Question: Was she a member of the Communist Party?
>
> Mr. Spencer: Well, she attended the meetings, and I never saw her card but she would have had to have been or she couldn't attend the meetings.

Now, Mr. Spencer goes on:

> Well, this was a very small meeting, and I was called in there and told to report to the Sherman Hotel, and when I got there at the desk I was told to go up to a room on the eighth floor. I went up there and there were only three people present at that meeting and it was Kate Hall, John Watkins, and Jerry Fielde.

Did you ever attend any meeting in the Sherman Hotel with Kate Hall and Jerry Fielde?

Mr. Watkins: I have. I would like to make a brief statement possibly in regard to——

Mr. Kunzig: In regard to this meeting?

Mr. Watkins: Yes.

Mr. Kunzig: All right.

Mr. Watkins: I am not now nor have I ever been a card-carrying member of the Communist Party. Rumsey was wrong when he said I had recruited him into the party, that I had received his dues, that I paid dues to him, and that I had used the alias Sam Brown.

Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings.

I would like to make it clear that for a period of time from approximately 1942 to 1947 I cooperated with the Communist Party and participated in Communist activities to such a degree that some persons may honestly believe that I was a member of the party.

I have made contributions upon occasions to Communist causes. I have signed petitions for Communist causes. I attended caucuses at an FE convention at which Communist Party officials were present.

Since I freely cooperated with the Communist Party I have no motive for making the distinction between cooperation and membership except the simple fact that it is the truth. I never carried a Communist Party card. I never accepted discipline and indeed on several occasions I opposed their position.

In a special convention held in the summer of 1947 I led the fight for compliance with the Taft-Hartley Act by the FE-CIO International Union. This fight became so bitter that it ended any possibility of future cooperation.

Mr. Kunzig: What was the date you say you stopped cooperating with the Communist Party?

Mr. Watkins: I say prior to the convention, 1947. I do not have the date.

Mr. Kunzig: When would you say this cooperation with the Communist Party started?

Mr. Watkins: I could not give you a date.

Mr. Kunzig: Estimate a date, to the best of your ability.

Mr. Watkins: I said approximately 1942 to 1947.

Mr. Kunzig: Approximately from 1942 to 1947, to use your own words, you cooperated with the Communist Party; is that correct?

Mr. Watkins: Yes; that is in my statement.

Mr. Moulder: Mr. Chairman.

Mr. Velde: Mr. Moulder.

4269 Mr. Moulder: To what extent or in what manner did you cooperate, did you attend meetings of the leadership of the Communist Party or was your cooperation with some of the movements that they were undertaking in cooperation with labor at that time?

Mr. Watkins: Well, the cooperation as I referred to in my statement was had by contributions; I had been present at meetings, caucuses, I referred to; and that is what I mean by cooperation.

Mr. Moulder: Did you participate in any political meetings where only Communists were involved?

Mr. Watkins: Only Communists were involved? Not to my knowledge. I have attended, in my work in the labor union, thousands of meetings, sometimes as many as four a day, and to answer about any specific meeting it would necessarily have to be pinpointed to some recollection.

Mr. Moulder: Well, did you consider yourself as actually affiliating yourself with the Communist cause or the philosophy of the Communist Party movement during that period of time, or were you using the Communist Party in your work as a labor leader, that is the point I was trying to make clear a moment ago. I was trying to distinguish. We do distinguish between those activities.

Mr. Watkins: Well, I would say that on occasions there was no difference in opinion on a position, which I might have felt the Communists were also in support of that position, and I did not oppose it, but where I felt that their position differed with mine I did oppose.

Mr. Moulder: Well, when you did agree it was in connection with your interest in labor, or was it because of your support of the Communist Party? That is the point I am trying to make clear.

Mr. Watkins: It was because I felt it was in the interest of our membership and within the labor policies of the union and within the CIO.

Mr. Moulder: I see. That is all.

Mr. Velde: About how much did you contribute to the Communist Party?

Mr. Watkins: I could not give any specific figures. I do recall one particular instance where I signed a petition

at a convention in Springfield, I believe it was, and gave a contribution. I don't recall whether it was a dollar; $2. I think the petition was a petition to free Earl Browder. I don't even know who was circulating it.

Mr. Velde: Proceed, Mr. Counsel.

Mr. Kunzig: Do you feel that Spencer and Rumsey—we will come to Rumsey in a minute, but you have already mentioned his name—had any legitimate reason for believing you to be a member of the Communist Party?

Mr. Watkins: None other than what I have stated in my statement.

Mr. Kunzig: Now, Mr. Rumsey testified before this committee on March 10, in public session, 1954, in Chicago, Ill., and he was asked:

> Who recruited you into the Communist Party, Mr. Rumsey?

and his answer was:

> John T. Watkins. He was then district president of the FE-CIO.

So I want to specifically ask you, did you recruit Mr. Rumsey into the Communist Party, Mr. Watkins?

Mr. Watkins: I did not.

4270 Mr. Kunzig: So you are specifically and unequivocally denying this statement made by Mr. Rumsey?

Mr. Watkins: I am.

Mr. Scherer: Pardon me just a minute.

Mr. Velde: All right. Proceed, Mr. Scherer.

Mr. Scherer: Can you give us any reason why Mr. Rumsey should have so testified before this committee under oath?

Mr. Watkins: I will give my personal reason, yes.

Mr. Scherer: We would like to know if there was any bias or prejudice.

Mr. Watkins: Mr. Rumsey—I was district president, as I have stated, of the FE-CIO District No. 2. That district was made up of a geographical area around the Quad Cities, including Canton, Dubuque and Rock Falls. Rumsey worked on my staff in the latter part of 1943 and the first part of 1944, at which time I released him from the staff and he went back into the shop to work.

Prior to the time I released him he had not been on very friendly terms with me, and after his release I had a lot of trouble with Rumsey.

Mr. Scherer: Then you say that in your opinion his testimony is based on personal ill-will toward you as a result of these controversies that you have just described?

Mr. Watkins: I think that was a great part of it, yes.

Mr. Scherer: Do you know of any other motive on the part of Rumsey that would have caused him to testify as he did?

Mr. Watkins: Well, I had also later removed him from the union, expelled him from the union through the procedures of the international constitution, as likewise I had Spencer.

Mr. Scherer: Did you know Rumsey was a member of the Communist Party?

Mr. Watkins: I knew he carried on pretty open activity in behalf of the Communist Party, and I have read his testimony where he testified he was a member of the party.

(At this point Mr. Watkins conferred with Mr. Rauh.)

Mr. Scherer: Before you read his testimony did you know that he was a member of the Communist Party?

Mr. Watkins: In 1949 he circulated an affidavit signed by himself and Spencer, something to the effect that he had been a member of the Communist Party, had left the party, and that he had been told by another party that I had been a member of the Communist Party under the name of Sam Brown. That affidavit signed by Rumsey and Spencer was distributed to the workers of John Deere Plow Works and to other workers in the Quad City area.

Mr. Spencer: Did you ever use the name of Brown?

Mr. Watkins: I never did; no, sir.

Mr. Scherer: Now, insofar as Spencer is concerned, what motive would he have in testifying the way he did, if you know?

Mr. Watkins: I wouldn't know, other than my own opinion would be his close association with Rumsey.

Mr. Scherer: Did he have any particular animosity toward you?

Mr. Watkins: Yes, I would say he did.

Mr. Scherer: What was the nature of that and the circumstances which gave rise to such animosity?

4271 Mr. Watkins: Well, he had been expelled from the union in the early part of—latter part of 1948 or the early part of 1949.

Mr. Scherer: Did you participate in that expulsion?

Mr. Watkins: Yes; I did.

Mr. Scherer: Why was he expelled from the union?

Mr. Watkins: He was leading a campaign for another labor organization.

Mr. Kunzig: What was the other labor organization?

Mr. Watkins: It was UAW-CIO.

Mr. Kunzig: This was before you went into the UAW, is that right?

Mr. Watkins: That is right.

Mr. Kunzig: I just wanted to get that clear.

Mr. Scherer: Did you know him to be a member of the party—Spencer?

Mr. Watkins: He testified he was. He signed the affidavit that I referred to saying he was, Spencer was.

Mr. Scherer: Did you of your own knowledge know he was prior to reading his affidavit or testimony?

Mr. Watkins: Not with any conclusive proof; no.

Mr. Scherer: Did you participate with him in any activity of the party?

Mr. Watkins: No.

Mr. Scherer: Did you participate with Rumsey in any activities of the party?

Mr. Watkins: No, sir.

Mr. Scherer: Your participation or association with the party as you have described it was entirely separate and apart from any activity on the part of Spencer and Rumsey in connection with the party?

Mr. Watkins: That is correct.

Mr. Velde: Let me ask you a question. You say here in your statement, and I think you read the statement into the record:

> I cooperated with the Communist Party and participated in Communist Party activity to such a degree

that some persons may honestly believe I was a member of the party.

Now, with whom did you participate in the Communist Party in these activities if you didn't participate with Spencer and Rumsey?

Mr. Watkins: I have participated in meetings with Fred Fine, who was present; Gil Green was present——

Mr. Velde: As you go through these: Fred Fine, what was his capacity in the Communist Party?

Mr. Watkins: I do not know what his title was, but he was some representative of the party.

Mr. Velde: Well, how did you know him to be a member of the Communist Party?

Mr. Watkins: I met him at, as I recall, at the 1946 Milwaukee convention.

Mr. Velde: Of the Communist Party?

Mr. Watkins: No; of the FE-CIO Union.

Mr. Velde: Well, I am asking you how you knew he was a member of the Communist Party?

Mr. Watkins: Well, it was public knowledge that he was a member, and any time that the meeting that I re-
4272 ferred to, in the caucuses, it was no secret that he was an official of some sort of the Communist Party.

Mr. Velde: All right. Will you proceed, then, with others that you have participated with in Communist Party activity?

Mr. Watkins: I have been in meetings where Bill Sentner has been present. I don't know of any meetings other than union meetings.

Mr. Moulder: Were they Communist Party meetings, that is what I want to know?

Mr. Watkins: No.

Mr. Kunzig: Excuse me. Is that Bill Sentner, S-e-n-t-n-e-r?

Mr. Watkins: I think so.

Mr. Moulder: Mr. Chairman.

Mr. Velde: All right. Mr. Moulder.

Mr. Moulder: When you refer to being in a meeting with these gentlemen that were known as Communists, were they Communist Party meetings?

Mr. Watkins: No, sir.

Mr. Velde: But you participated in Communist Party activity with them at these meetings, as I understand you to say in your statement here; is that right?

Mr. Watkins: Well, the Communist Party activities, according to the statement, is the activity the Communist Party was carrying on at such occasions, such as the convention which I have cited, and activities such as a petition they may have been circulating, or a contribution they may have been asking.

Mr. Velde: And that is contributions and petitions for the Communist Party cause, is that right?

Mr. Watkins: I assume they were; yes.

Mr. Scherer: Well, you mean these activities were in connection with the Communist Party's attempt to control the union activities?

Mr. Watkins: No; I couldn't say they were directed toward the union as such.

Mr. Scherer: Well, you know that that was the general program and policy of the party, to attempt to control the various unions, or some unions; you know that is true, don't you, witness?

Mr. Watkins: I think that is generally true; yes.

Mr. Scherer: These discussions that you had with these men you knew to be Communists at union meetings were in connection with their desire to control to some extent, at least, the union's policy and activities, were they not?

Mr. Watkins: I would say that is probably correct.

(At this point Mr. Watkins conferred with Mr. Rauh.)

Mr. Velde: Can we conveniently recess at this point, Mr. Counsel? We have a quorum call. I am sure the members want to get over there.

Mr. Kunzig: Yes; I think so.

Mr. Velde: The committee will be in recess for 20 minutes in order to enable the committee members to answer a quorum call.

(Whereupon, at 11:10 a.m., a recess was taken, the hearing to be reconvened at 11:30 a.m.)

(Thereupon, at 11:40 a.m., pursuant to the taking of the recess, the hearing was reconvened, the following committee members being present: Representatives Harold H. Velde, Gordon H. Scherer, and James B. Frazier, Jr. (appearance noted in transcript).)

Mr. Velde: The committee will be in order.

4273 Let the record show that I have appointed a new subcommittee consisting of Mr. Scherer, Mr. Moulder, and myself as chairman, and a quorum for this hearing is present, consisting of Mr. Scherer and the chairman.

Proceed, Mr. Counsel.

Mr. Kunzig: Mr. Chairman, may I state for the record that during the intermission Mr. Rauh, unfortunately, had to leave to catch a plane to another city to attend another case. He said his client would be represented, as was already stated in the record, by Mr. Pollitt. He was very sorry he had to leave.

Mr. Velde: All right. Proceed.

Mr. Kunzig: Now, I would like to ask you this, Mr. Watkins: Did you ever attend any Communist Party meetings?

Mr. Watkins: Not that I know as Communist Party meetings as such, no.

Mr. Kunzig: What do you mean by saying "Not that I know as Communist Party meetings as such"?

Mr. Watkins: Well, I will make one exception to that. I attended a meeting in Moline one time where the chairman of the party spoke. I believe it was Foster. It was a public meeting.

Mr. Kunzig: A public meeting?

Mr. Watkins: It was open to the public. Approximately 140 people were in attendance.

Mr. Kunzig: Was it an open Communist Party meeting?

Mr. Watkins: Well, it was advertised that Foster would speak.

Mr. Velde: Who did you say was the speaker, Foster?

Mr. Watkins: I don't know the first name, but it was Foster.

Mr. Velde: William Z. Foster. Was he at that time the head of the Communist Party of the United States?

Mr. Watkins: I don't recall. He was an official, I believe, of the party. The meeting was held at Swedish Olive Hall in Moline.

Mr. Kunzig: Did you ever attend any closed Communist Party meetings?

Mr. Watkins: No.

Mr. Kunzig: Did you ever attend any Communist Party meetings with Mr. Rumsey?

Mr. Watkins: No.

Mr. Kunzig: Did you ever attend any Communist Party meetings with Mr. Spencer?

Mr. Watkins: No.

Mr. Kunzig: Now, when Mr. Rumsey testified in Chicago, March 16, 1954, as follows:

Did you ever pay dues to Mr. Watkins?

The answer was "Yes."

Now, I ask you, Did Mr. Rumsey ever pay dues to you?

Mr. Watkins: He did not.

Mr. Kunzig: You unequivocally deny that he ever paid any dues to you?

Mr. Watkins: Communist Party dues, yes.

Mr. Kunzig: Did he ever pay any other type of dues to you?

Mr. Watkins: Not that I recall. He may possibly have paid union dues before the contract, but I don't recall it.

Mr. Scherer: Does the testimony taken in Chicago indicate that the witness specifically said they were Communist Party dues?

4274 Mr. Kunzig: Yes, Mr. Scherer.

I will read some more. The question was:

> Now, how long did you belong to the Communist Party?
>
> Mr. Rumsey: It would be in August 1944 when I left.
>
> Mr. Kunzig: To whom did you pay dues in the party, Mr. Rumsey?
>
> Mr. Rumsey: Well, it would be the various organizers: that is, district organizers.
>
> Mr. Kunzig: Did you ever pay dues to Mr. Watkins?
>
> Mr. Rumsey: Yes.

Mr. Kunzig: Was this at the beginning?

Mr. Rumsey: At the start.

Mr. Kunzig: Do you recall how much dues you paid?

Mr. Rumsey: It was on the percentage. It was prorated percentagewise.

Now you are saying very definitely that no dues were paid to you by Mr. Rumsey?

Mr. Watkins: I said very definitely they were not.

Mr. Kunzig: Now, I asked this question of Mr. Rumsey:

> Did you collect dues from people in the Communist Party?

and he went on and testified yes, that he collected dues, and so forth, and I said:

> In the case of Watkins, did you collect dues from him under the name of Watkins or Sam Brown?

And he answered: "Sam Brown."

Now, my question to you is, Were dues ever collected from you by Mr. Rumsey?

Mr. Watkins: No, sir.

Mr. Velde: Now, specifically what kind of dues, Mr. Counsel?

Mr. Kunzig: Well, I will ask first about Communist Party dues.

Were Communist Party dues ever collected from you by Mr. Rumsey?

Mr. Watkins: No, sir.

Mr. Kunzig: Did you ever use the alias Sam Brown?

Mr. Watkins: Never.

Mr. Kunzig: Did you ever use any alias?

Mr. Watkins: No, sir.

Mr. Kunzig: You have been known always by the name John Watkins?

Mr. Watkins: John T. Watkins.

Mr. Kunzig: John T. Watkins?

Mr. Watkins: And John Watkins.

Mr. Kunzig: Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago. I

I am asking you first whether you know these people. My first question: Warner Betterson?

Mr. Watkins: No, I don't know him.

Mr. Kunzig: Joan Steel?

Mr. Watkins: Not to my knowledge.

Mr. Kunzig: Peter Gustafson?

Mr. Watkins: I know a Gustafson, but I don't know a Peter Gustafson.

Mr. Kunzig: Donald O. Spencer, I already asked you about. You know Donald O. Spencer?

Mr. Watkins: Yes, sir.

Mr. Kunzig: Harold Fisher?

Mr. Watkins: Yes, sir.

4275 Mr. Kunzig: You know Harold Fisher?

Mr. Watkins: I do.

Mr. Kunzig: Do you know Harold Fisher to be a member of the Communist Party?

Mr. Watkins: I will ask counsel.

Mr. Kunzig: Certainly.

(At this point Mr. Watkins conferred with Mr. Pollitt.)

Mr. Watkins: Mr. Chairman, in regard to that question, I would like to make a very brief statement I prepared in anticipation of this answer.

Mr. Velde: You may proceed.

Mr. Watkins: Thank you.

I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.

I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates.

Mr. Kunzig: And I want to get this clear for the record. You are not in any way raising the fifth amendment?

Mr. Watkins: I am not.

Mr. Kunzig: But you are refusing to answer the question I have just asked you?

Mr. Watkins: Based upon the statement just read, yes.

Mr. Kunzig: And you, of course, have advice of counsel. He is sitting right next to you at this moment and you just conferred with him, is that correct?

Mr. Watkins: That is correct.

Mr. Scherer: Mr. Chairman, I ask that you direct the witness to answer.

Mr. Velde: Yes. This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation.

The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Representatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have
4276 been members of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel.

Now, do you remember the question that was propounded to you?

Mr. Watkins: I remember the question, Mr. Chairman, and I have read my answer which, among other things, states that your committee may have this power, and I stand on my statement.

Mr. Velde: Proceed, Mr. Counsel.

Mr. Kunzig: Now, I am going down and ask you other names as I started to do a moment ago of people who were identified by Mr. Rumsey during his testimony in Chicago.

Do you know Charles——

Mr. Scherer: Wait a minute. Identified by Mr. Rumsey as members of the Communist Party?

Mr. Kunzig: That is correct, I stated as members of the Communist Party before. This, of course, was at the time Mr. Rumsey was a member of the Communist Party that he knew these people to be members with him.

Did you know Charles Hobbe?

Mr. Watkins: I do.

Mr. Kunzig: Did you know Charles Hobbe to be a member of the Communist Party?

Mr. Watkins: I stand on my statement.

Mr. Kunzig: In other words, you are refusing to answer that question?

Mr. Watkins: As set forth in the statement I just read.

Mr. Kunzig: I ask that the witness be directed to answer the question, Mr. Chairman.

Mr. Velde: Clearly you should in cooperation with the Congress of the United States answer that question; so you are directed to answer the question, Mr. Watkins.

Mr. Watkins: I am sorry, Mr. Chairman, but I stand on the statement which I entered into the record.

Mr. Kunzig: I want to make the record very clear, Mr. Chairman.

You are refusing to answer that question, is that correct?

Mr. Watkins: I believe I have answered the question——

Mr. Kunzig: No, the question is not answered at all, Mr. Chairman.

Mr. Watkins (continuing): With the statement, and I state that I stand on the statement that I have read.

Mr. Kunzig: His alleged answer makes it clear that his answer is a refusal, Mr. Chairman.

Do you know Henry Mack, M-a-c-k?

Mr. Watkins: I did know him, yes.

Mr. Kunzig: Did you know Henry Mack to be a member of the Communist Party?

Mr. Watkins: Again my answer, that I stand on the statement I read into the record.

Mr. Velde: Again, Mr. Watkins, you are directed to answer the question.

Mr. Watkins: Again, Mr. Chairman, I stand on the statement.

Mr. Kunzig: Did you know an Ernest DeMaio?

Mr. Watkins: I know Ernest DeMaio, yes.

Mr. Kunzig: Do you know Ernest DeMaio to be a member of the Communist Party?

4277 Mr. Watkins: I stand on the statement that I read.

Mr. Velde: Do you know him to have ever been a member of the Communist Party?

Mr. Watkins: I stand on the statement, Mr. Chairman, that I read.

Mr. Velde: Again you are directed to answer that question concerning Mr. Ernest DeMaio.

Mr. Watkins: Again, Mr. Chairman, I stand on the statement entered into the record.

Mr. Kunzig: I want to get this record clear, Mr. Chairman, because there were two questions there.

My question was: "Did you know Mr. Ernest DeMaio to be a member of the Communist Party?"

I wish him to be directed to answer that question.

Mr. Velde: All right. You are directed, then, Mr. Witness, to answer the question as to whether you know Mr. Ernest DeMaio to be a present member of the Communist Party of the United States.

(At this point Mr. Watkins conferred with Mr. Pollitt.)

Mr. Watkins: Mr. Chairman, again I stand on the statement which, among other things, states that I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are.

(At this point Mr. Watkins conferred with Mr. Pollitt.)

Mr. Watkins: I will not, however, answer any question

with respect to others with whom I associated in the past. I stand on that statement, Mr. Chairman.

Mr. Kunzig: I am asking you the question whether you know Ernest DeMaio to be a member of the Communist Party, and you are refusing to answer, is that right?

Mr. Watkins: Based on the statement entered into the record.

Mr. Kunzig: Did you know Charles Killinger, K-i-l-l-i-n-g-e-r?

Mr. Watkins: I knew Charles Killinger.

Mr. Kunzig: Did you know Charles Killinger to be a member of the Communist Party?

Mr. Watkins: I again stand on the statement.

Mr. Kunzig: I respectfully request, Mr. Chairman, that the witness be directed to answer the question as to whether he knows Charles Killinger to be a member of the Communist Party.

Mr. Velde: Again you are directed to answer the question as to your knowledge of the Communist Party affiliation of Charles Killinger.

Mr. Watkins: Again, Mr. Chairman, I stand on the statement.

(At this point Mr. Watkins conferred with Mr. Pollitt.)

Mr. Kunzig: Mr. Watkins, I am going to read a list of names to you. I will read it slowly——

(Representative Frazier entered the hearing room at this point.)

Mr. Kunzig: And I am going to ask you—these are all names identified as members of the Communist Party by Mr. Rumsey in his testimony in Chicago. I am going to read the list and ask you whether you ever knew any of these people to be members of the Communist Party:

Lee Landbaker; Morris Childs; Dorothy Hillyerd; Theo Kruse; Charles Lawson; Olaf Lidel, L-i-d-e-l; Sarah Levine; Murray Levine; Harriet Leuth, L-e-u-t-h; Herbert Marsh; Ajay Martin; Harold Metcalf; John Milkevitch; Grant Oakes; Joe Ruick, R-u-i-c-k, or alias Joe Webber;
4278 Frank Rogers; Arthur Saunders; Seymour Siporin;

Joseph Stern; George Teeple, T-e-e-p-l-e; Ray Teeple; Donald Tieglan, T-i-e-g-l-a-n; Rex Wielock; John Wilson; Marie Wilson; Mrs. John Wilson.

Do you know any of those names I just read to you to have been members of the Communist Party?

(At this point Mr. Watkins conferred with Mr. Pollitt.)

Mr. Watkins: In regard to the name Stern that you mentioned, I believe as Joe——

Mr. Kunzig: Joseph Stern, yes.

Mr. Watkins: I have knowledge that he carried on Communist Party activities in the Quad City area. I have not known him for several years, or his whereabouts, but at the time he was in the Quad Cities he was carrying on Communist Party activities.

In regard to the other names that you have read, I will not answer, based upon the statement that I read into the record previously referred to.

Mr. Kunzig: Mr. Chairman, I respectfully request that the witness be directed to answer that question.

Mr. Velde: Now, the question was as to whether the witness has knowledge of any of the names that you read, whether those persons whose names you read had been members of the Communist Party?

Mr. Kunzig: That is correct.

Mr. Velde: Yes, you are directed to answer that question, Mr. Watkins.

Mr. Watkins: And, Mr. Chairman, I refuse to answer, based upon the statement previously read into the record.

Mr. Kunzig: Mr. Chairman, I have no further questions of this witness.

Mr. Velde: Mr. Scherer?

Mr. Scherer: No questions.

Mr. Velde: Mr. Frazier?

Mr. Frazier: No questions.

Mr. Velde: It seems very clear to me that the witness has pertinent information concerning Communist Party activities which we are authorized and dutybound to investigate, and that the witness should in the spirit of cooperation with his Government answer those questions.

However, upon his refusal to answer those questions, there is nothing we can do at the present time to force the witness to answer those questions.

So unless there is anything further, the witness is dismissed and the committee will stand in recess until 2 o'clock.

* * * * * * *

Govt. Exhibit No. 7

Filed July 18, 1955, Harry M. Hull, Clerk

CONGRESS OF THE UNITED STATES

House of Representatives

Committee on Un-American Activities

Washington

The Committee on Un-American Activities met in executive session January 22, 1953, in Room 226, Old House Office Building. The following members were present:

Harold H. Velde, Chairman
Bernard W. Kearney
Donald L. Jackson
Kit Clardy
Gordon H. Scherer
Francis E. Walter
Morgan M. Moulder
Clyde Doyle
James B. Frazier, Jr.

The following resolution was unanimously adopted:

BE IT RESOLVED, that the Chairman shall have authority from time to time to appoint subcommittees composed of one or more members of the Committee on Un-American Activities for the purpose of performing any and all acts which the Committee as a whole is authorized to do.

The Committee on Un-American Activities met in executive session March 3, 1954, in Room 225, Old House Office Building. The following members were present:

Harold H. Velde, Chairman
Donald L. Jackson
Gordon H. Scherer
Francis E. Walter
Clyde Doyle
James B. Frazier, Jr.

The following resolution was unanimously adopted:

BE IT RESOLVED, that subcommittees of the Committee on Un-American Activities will consist of not less than three members, with at least a majority of the subcommittee present at the hearings for which they were appointed.

CONGRESS OF THE UNITED STATES

House of Representatives

Committee on Un-American Activities

Washington

Filed July 18, 1955, Harry M. Hull, Clerk

May 27, 1955

I, Thomas W. Beale, Sr., duly appointed, authorized and acting Chief Clerk of the Committee on Un-American Activities, do hereby certify that the above resolutions were adopted by the Committee on Un-American Activities at duly called and held executive sessions.

Given under my hand this Twenty-seventh day of May 1955.

Thomas W. Beale, Sr., Chief Clerk.

Defts. Exhibit No. 1

Filed July 18, 1955, Harry M. Hull, Clerk

Original

By authority of the House of Representatives of the Congress of the United States of America

To United States Marshal, Dubuque, Iowa

You are hereby commanded to summon John T. Watkins to be and appear before the Committee on Un-American Activities, or a duly authorized subcommittee thereof, of the House of Representatives of the United States, of which the Hon. Harold H. Velde is chairman, in their chamber in the city of Washington, Room 225-A, Old House Office Building, on Monday, April 26, 1954, at the hour of 10:30 a. m., then and there to testify touching matters of inquiry committed to said Committee; and he is not to depart without leave of said Committee.

Herein fail not, and make return of this summons.

Witness my hand and seal of the House of Representatives of the United States, at the city of Washington, this 6th day of April, 1954.

Harold H. Velde, Chairman.

Attest: Lyle O. Snader, Clerk.

Defts. Exhibit No. 2

Filed July 18, 1955, Harry M. Hull, Clerk

WESTERN UNION

SAO 23 WM 12

W.Buao 13 XV Govt. Pd-Bu Washington, D. C. 22 954 Ame: John T. Watkins,

1224 44 Ave., Rock Island, Ill.

Under continuing authority of subpoena served upon you April 13, 1954, your appearance before Committee on Un-American Activities is hereby postponed from April 26 to Thursday, April 29, 1954, 10:30 A. M.

Harold H. Velde, Chairman.

Defts. Exhibit No. 4 (ident.)

OFFER OF PROOF

Filed July 18, 1955, Harry M. Hull, Clerk

The House Committee on Un-American Activities has conducted two series of hearings on communist activities in the Chicago area. The first was in the 82nd Congress, Second Session, and was entitled Communist Activities in the Chicago Area, Parts I and II (1952).

The second series was conducted in the 83rd Congress, Second Session and was entitled Investigation of Communist Activities in Chicago Area, Parts I, II and III (1954).

The earlier hearings will be referred to as Chicago Area Hearings (1952); the second series of hearings will be referred to as Chicago Area Hearings (1954).

MORRIS CHILDS

Role of Communist Press in the Communist Party, 82nd Cong. 2d sess.—January, 1952.

p. 2236

Budenz says Childs went with him to see Weiner (who controlled all party funds) to get funds for Midwest Daily Worker.

Communist Activities in the Chicago Area—Part I. 82nd Cong. 2 sess. Sept. 2 & 3, 1952.

p. 3745

Testimony of Donald O. Spencer. Discusses meeting at Sherman Hotel in Chicago, of labor people and Communists to discuss tactics in '44 and '45. Childs was there and didn't belong to any union that was there.

Testimony of Walter S. Steele Regarding Communist Activities in the U. S. Hearings, etc. 80th Cong. 1st sess. on H.R. 1884 and H.R. 2122.

p. 43

Lists Morris Childs as staff writer for Peoples Daily World.

p. 44

Lists Morris Childs as contributor to Political Affairs.

p. 34

These organs described as major Communist publications.

Investigation of Un-American Propaganda Activities in the United States (Hearings before a Special Committee on Un-American Activities) Volume 7. (1939)

p. 4281

Listed by Browder as member of the National Committee of the Communist Party, U. S. A.

p. 4835

Childs received money from William Weiner, in charge of Communist Party finances.

Volume 13 (1940)

p. 7725

Lightfoot states M. Childs was executive secretary in Chicago.

Hearings on Gerhart Eisler, 80th Cong. 1st sess. (1947).

p. 22

Childs identified by W. O. Nowell as having been at propaganda school in Russia.

Chicago Area Hearings—Part 2—1954.

p. 4248

Rumsey identifies him as "from the Central Communist Committee". Childs would tell them what they were to do and how they were to function.

p. 4259

Rumsey testifies Childs gave them the "line" on Yalta.

ERNEST DEMAIO

Report on the Communist Peace Offensive, H. Rept. 378, 82nd Cong. 1st sess.

p. 51

DeMaio sponsor of American Peace Crusade.

p. 53

Also supporter of American Peace Mobilization.

p. 116

Name on leaflet of American Continental Congress for Peace, as sponsor.

p. 126

List of sponsors of Stockholm Appeal.

p. 136

Reprints of documents of Peace Crusade.

p. 166

Members of World Peace Council, elected at World Peace Congress.

Chicago Area Hearings, (1952).

p. 3745

Spencer testimony—DeMaio at meeting.

Hearings Regarding Communist Infiltration of Labor Unions—Part I—Aug., 1949, 81st Cong. 1st sess.

p. 657

(This is part of an appendix which consists of J. B. Mathews testimony before a House Education and Labor Subcommittee, Sept. 29, 1948) lists "all" of DeMaio's "Communist affiliations."

Hearings Regarding Communist Activities in the Cincinnati, Ohio, area—Part I, 81st Cong., 2d sess.

p. 2746

Testimony of Victor Decavitch "Definitely in work of Communist Party."

p. 2749

At Communist Party meeting of UE people which discussed removal of Browder.

Hearings Regarding Communist Activities in the Chicago Area—Part I, 82nd Cong., 2d sess. (1952)

p. 3638

Testimony of Lee Lundgren. De Maio put Communist Party member on staff of U.E.

p. 3655

Testimony of Irving Crane. Meeting at De Maio's house with Communist Party leaders.

p. 3657

De Maio supports Communist slate.

p. 3667-3682

De Maio's testimony. Largely relies on the privilege. Questioning indicates Committee's full knowledge about De Maio.

Chicago area—Part 2 (1954)

p. 4248

Rumsey identifies him as Communist Party member.

Special Committee—Vol. 16.

p. 10229

Robert Stripling gives full "Communist" record of De Maio; lists fronts.

p. 10236, 10237, 10240

Harry Morgan testifies as to difficulties with De Maio. De Maio ordered leaflets for Abraham Lincoln school distribution by union men.

Hearings Regarding Communism in Labor Unions in the United States, 80th Cong. 1 Sess. (1947)

p. 127

J. Julianelle, business agent for UE Local, states De Maio is a Communist.

p. 196

Conroy ways E. De Maio is not Communist to his knowledge.

Report on the March of Labor, December 22, 1954.

p. 15

Ernest DeMaio listed on table showing individuals identified as Communist Party members before the Committee on Un-American Activities who contributed articles to the "March of Labor".

HAROLD FISHER

Chicago Area, Part I (1952).

p. 3743

Spencer testimony—Fisher attended closed meetings of the Communist Party.

Chicago area—Part 2 (1954).

p. 4246

Rumsey identifies Fisher as union organizer for whom he collected dues.

p. 4248

Repeats testimony.

DOROTHY HILLYERD

Chicago Area (1952) Part I

p. 3742

Spencer just identifies her a member of the Communist Party.

Chicago area—Part 2 (1954)

p. 4248

Rumsey identifies her as "just an employee card carrier".

CHARLES W. HOBBES (correct name is Charles Hobbie)

Report on the Communist Peace Offensive, H. Rept. 378, 82nd Cong., 1 sess.

p. 127

Charles W. Hobbie, Cedar Rapids, Iowa listed as sponsor of Stockholm appeal.

Chicago area—Part 2 (1954)

p. 4246

Rumsey says he collected dues from Hobbes.

CHARLES KILLINGER

Chicago Area (1952) Part 1

p. 3709-3710

Identified by A. Kratz as field representative of FE, who recruited him into the Party, met him at Communist Party meetings.

Chicago area—Part 2 (1954)

p. 4248

Rumsey identifies him as Communist Party member.

THEO KRUSE

Chicago area (1952) Part 1

p. 3740

Identified by Spencer as a member of "city branch" of Communist Party in Rock Island.

Chicago area—Part 2 (1954)

p. 4249

Rumsey identifies her as beauty parlor operator, a Communist Party member.

LEE LANDBAKER (as named in indictment)
LELAND BAKER

Chicago area hearings (part 2) (1954)

p. 4247

Rumsey says following list of people are "known, paid, and so forth, card-carrying Communists".

p. 4248

He names "Leland Baker, Peoria Caterpillar plant."

CHARLES LAWSON

Chicago Area—Part 1—(1952)

p. 3680

De Maio refuses to answer whether Lawson is in May Day photograph—photograph reproduced in hearings (page 3681)

p. 3714

Kratz says Lawson attended "fraction meetings" from another local of FE with him.

p. 3736

Lawson and Cooke (J. E. Cooke testifying) called to headquarters to discuss differences in party policy.

Chicago area—Part 2—1954

p. 4249

Rumsey identifies him as district Vice President of UFW, and a "card-carrying Communist".

HARRIET LEUTH

Chicago area. (1952) Part 1

p. 3739

Spencer testifies Leuth was recording secretary of local 150-FE.

Chicago area—Part 2 (1954)

p. 4249

Rumsey lists her. "Just a factory worker, no official position".

MURRAY LEVINE

Chicago area (Part I—1952)

p. 3741

Attended all closed meetings of the Party.

Chicago area—Part 2

p. 4249

Rumsey identifies him as CP member—"just citizen".

SARAH LEVINE

Chicago area (1952) Part 1

p. 3742

Spencer identifies Sarah Levine, wife of Murray Levine, as member of the party.

Chicago area—Part 2 (1954)

p. 4249

Rumsey identifies her (and her husband) as CP members—"just citizens".

OLAF LIDEL

Chicago Area (Part 2) (1954)

p. 4249

A watchmaker in Rock Island, a Communist Party member. Identified by Rumsey.

Chicago Area (Vol. 1) (1952)

p. 3740

Spencer identifies an Olaf Ledel as a member of the Communist Party in this area.

HENRY MACK

Chicago Area Hearings—Part 2 (1954).

p. 4247

Rumsey collected dues from Henry Mack. He was an organizer from the Abraham Lincoln Brigade.

p. 4249

Rumsey identifies him as "the one from the Abraham Lincoln Brigade . . . he was an organizer for the Rock Island District . . ."

HERBERT MARSH

(probably referring to Herb March)

Communist Activities in the Chicago Area (1952)—Part 2.

p. 3759

Ray Thompson of United Packinghouse Workers, testifying. He is former member of Communist Party 1944-1948. Attended closed Communist meeting at home of Herbert March, to decide who should be president of local union.

p. 3767

Some of "party instruction" was given by March.

pp. 3814, 3831

March testifies. March has been organizer, in different unions, since 1937. Declines on fifth amendment grounds to answer series of questions from committee regarding arrest and fingerprinting in Detroit. Declines to answer questions about aliases, about statements from himself as YCL and CP member quoted in the Daily Worker and about many organizations. (Questions indicate committee has thorough file on him).

p. 3829

Committee also has letter signed by March as CP member.

p. 3831

Fingerprint technician from Chicago testified that March's fingerprint is identical with that of Harry Martin, arrested in Detroit.

Chicago Area—Part 2 (1954).

p. 4249

Rumsey lists him as District President of the Packinghouse Workers and a member of the Communist Party.

Report on the March of Labor, December 22, 1954.

p. 16

Herb March listed on table showing individuals identified as Communist Party members who contributed articles to the "March of Labor".

A. J. MARTIN

Chicago hearings—Part I (1952).

p. 3732

John Edward Cooke testifying: A. J. Martin elected after a meeting of negro delegates in FE to determine who should run for Executive Board.

p. 3733

Board member elected 1946 convention—doesn't know if Communist Party member.

Chicago hearings—Part 2 (1954).

pp. 4249, 4250

Rumsey lists Martin from the Peoria Caterpillar Works, Vice-President of the UE, as a Communist.

JOHN MILKOVITCH

Chicago area. (1952) Part 1.

p. 3742

Spencer identifies as member of Communist Party.

Chicago Area—Part 2 (1954).

p. 4250

Rumsey identifies Melkovitch as a Communist. He was a committee member of the union, local 104, East Moline, International Harvester plant.

HAROLD METCALF

Chicago Area—Part 2 (1954).

p. 4250

Rumsey identifies Metcalf as a Communist. Metcalf was a retired machine worker from Davenport, Iowa.

GRANT OAKES

Chicago area—Part 1 (1952).

p. 3719

Declines to answer whether he is or was Communist Party member.

p. 3745

Spencer testifies Oakes was present at Communist Party labor meetings in Sherman Hotel.

Chicago area—Part 2 (1954).

p. 4250

Rumsey identifies him as a Communist. Oakes was president of the FE (International Farm Equipment & Metal Workers).

Expose of the Communist Party of Western Pennsylvania—Part 2, 81st Cong., 2d Session.

p. 2452

Listed in newspaper as protesting indictment of the 12 communists.

Report on Civil Rights Congress as a Communist Front organization, H. Rept. No. 1115, 80th Cong. 1st Sess.

pp. 12-13

Oakes listed as Civil Rights sponsor who also belonged to American Peace Mobilization, the National Federation for Constitutional Liberties and also supported release of Earl Browder.

p. 16

Description of all Oakes' affiliations; he is listed as key individual in Civil Rights Congress.

p. 33

Oakes signed 1946 attack by labor leaders on House UnAmerican Activities Committee.

Report on the CIO Political Action Committee, 78th Cong. 2nd Sess. March 29, 1944.

p. 34

Spoke at CIO PAC meeting.

pp. 44-45

Summary of all Oakes' activities considered Communi inspired.

p. 58

Joined in Citizens' committee to free Earl Browder.

p. 64

Supported Daily Worker.

p. 72

Sponsor of Schappes defense committee.

FRANK ROGERS

Dies Committee Hearings—Vol. 3.

p. 2090

Identified as prominent Communist in Cleveland, Ohio by E. Herzog.

Dies Committee Hearings—Vol. 13.

p. 7772

Signed letter (in possession of Committee) from Abraham Lincoln Battalion to IWO as Party Secretary.

Chicago area—Part 1.—1952.

p. 3650

Lundgren testifies that Frank Rogers was at one time on UE staff of Local 1114.

Chicago area—Part 2—1954.

p. 4250

Rumsey identifies Rogers as a Communist. Organizer for

FE. Worked ont of lake-district. One time he was at Peoria.

JOE RUICK (ALIAS JOE WEBBER)

Chicago Area—Part 2 (1954).

p. 4250

Rumsey identifies him as Communist. Thinks Ruick was the real name. Webber hooked on later. He was district organizer out of the national office.

ARTHUR W. SANDERS

Chicago Area—Part 2—1954

p. 4250

Rumsey identifies him as Communist. He was an organizer for the Steelworkers. He was a Communist in the confines of communism, attending meetings, so forth.

SEYMOUR SIPORIN

Report No. 1311—1944, 78th Cong. 2d sess. Report on CIO Political Action Committee.

p. 178

Complete description of Siporin. Legislative director of FE, active on CIO Action Committee; arrested in Chicago, as Communist, Chairman of May Day Committee.

p. 65

Supported Daily Worker.

Chicago area—Part 2 (1954).

p. 4251

Rumsey identifies him as Communist. District organizer for the F. E.

DONALD O. SPENCER

Testimony in Chicago Area hearings (1952).

p. 3737, 3752

States he was member of Communist Party, recruited by

W. Rumsey "with the endorsement and full knowledge of John Watkins".

p. 3738

Describes Communist Party set-up in FE, and especially Local 150 and identifies numerous people.

Chicago Area—Part 2 (1954).

p. 4251

Rumsey identifies him as Communist. Says he has no official position with any union "as of this time"—March, 1954.

p. 4253

Spencer testified before Committee two years ago.

JOSEPH STERN

Chicago area (Part I)—1952.

p. 3740

Spencer identified J. Stern as one of the top committee of Quad City area in Communist Party.

p. 3747-3748

Joe Stern too militant—caused embarrassment and disruption in Farmall local. Spencer called to testify against him at meeting of Kate Hall, John Watkins and Jerry Fielde.

Chicago Area (Part 2)—1954.

p. 4251

Rumsey identifies Stern as a Communist member. He was on a committee in the East "someplace", the Central Committee, Quad-Cities Industrial Committee.

GEORGE TEEPLE

Chicago Area—Part 2 (1954).

p. 4251

Rumsey identifies him as Communist. A foundry worker in Moline. Within the Communist Party.

RAY TEEPLE

Chicago area—Part I (1952).

p. 3740

Spencer identifies as one of top committee of Communist Party in Quad City area.

Chicago area—Part 2 (1954).

p. 4251

Rumsey identifies him as Communist; brother of George Teeple. Chairman of the Bettendorf in Quad City area.

DONALD TIEGLAN

Chicago area—Part 1—1952.

p. 3742

Spencer says he was member of Communist Party, worked in Harvester plant, elected to state legislature.

Chicago area—Part 2—1954.

p. 4251

Rumsey identifies him Communist. From Local 104, International Harvester local. Sec'y Treasurer of Local at one time. Served in House of Representatives of Illinois at one time.

JOE RUICK (ALIAS JOE WEBBER)

Chicago Area—Part 2 (1954).

p. 4250

Rumsey identifies him as Communist. Thinks Ruick was the real name—Webber hooked on later. He was district organizer out of the national office.

REX WIELOCK

Chicago Area—Part 2 (1954).

p. 4252

Rumsey identifies him as Communist, Wielock was UE organizer.

Chicago Area—Part 1 (1952).

p. 3742

Spencer identifies a Rex Wheelock as a member of the Communist Party.

JOHN WILSON

Chicago Area—Part I (1952).

p. 3741

Spencer says Member of Davenport Branch of the Communist Party. Mr. Wilson secretary-treasurer of Quad City Area.

Chicago Area—Part II (1954).

p. 4252

Rumsey identifies him as Communist. Says he had "no official position, only Communist."

MRS. JOHN WILSON (MABEL OR MARIE)

p. 4252

Rumsey identifies her as Communist (1954) says she "had no official position, only Communist."

DEFTS. EXHIBIT NO. 5

Filed July 18, 1955, Harry M. Hull, Clerk.

United States District Court for the District of Columbia
Holding a Criminal Term

Criminal No. 1153-54

United States of America

v.

John T. Watkins

STIPULATION

It is hereby stipulated by and between the parties as follows:

1. The documents listed in Schedule A, attached hereto and made a part hereof, each of which has been initialed by counsel for both parties in triplicate, are official publications of the Committee on Un-American Activities of the House of Representatives, are true and accurate transcriptions of hearings and reports of that Committee and may be introduced in whole or in part into evidence at the trial of this case subject to objection by either party as to materiality, relevancy and competency.

2. The documents which are described in Schedule B, attached hereto and made a part hereof, are official publications of the said Committee on Un-American Activities and are true and accurate transcriptions of hearings and reports of that Committee, and the excerpts therefrom which are set forth in said Schedule B are true and accurate excerpts from said documents and the documents and/or excerpts may be introduced in whole or in part into evidence at the trial of this case, subject to objection by either party as to materiality, relevancy and competency.

3. As to the excerpts of statements on the floor of the House of Representatives copied from the Congressional Record and set forth in Schedule C, attached hereto and made a part hereof, the designated Representative in each instance made the statement attributed to him on the floor of the House of Representatives at the time specified and the said excerpts may be introduced in whole or in part into evidence at the trial of this case subject to objection by either party as to materiality, relevancy and competency.

4. The excerpts from the newspapers contained in Schedule D, attached hereto and made a part hereof, are true and correct quotations, digests or reports as the case may be of the statements and events reported therein and may be admitted as evidence at the trial of this case, subject to

objection by either party as to materiality, relevancy and competency.

WILLIAM HITZ,
Attorney for the United States.
SIDNEY S. SACHS,
Attorney for the Defendant.

DEFTS. EXHIBIT No. 6 (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk.

Schedule A

1. Committee on Un-American Activities, Annual Report for the Year 1954, 84th Congress, 1st Session, House Report No. 57.

2. Committee on Un-American Activities, Annual Report for the Year 1953, 83rd Congress, 2d Session, House Report No. 1192.

3. Committee on Un-American Activities, Annual Report for the Year 1952, 82nd Congress, 2d Session, House Report No. 2516.

4. Committee on Un-American Activities, Annual Report for the Year 1951, 82nd Congress, 2d Session, House Report No. 2431.

5. Committee on Un-American Activities, Annual Report for the Year 1950, 81st Congress, 2d Session, House Report No. 3249.

6. Committee on Un-American Activities, Annual Report for the Year 1949, U. S. House of Representatives, March 15, 1950.

7. Pamphlet, "This is YOUR House Committee on Un-American Activities," September 19, 1954.

8. 100 Things You Should Know About COMMUNISM, Committee on Un-American Activities, 82nd Congress, 1st Session, House Document No. 136.

9. Organized Communism in the United States, Committee on Un-American Activities, 83rd Congress, 2nd Session, House Report No. 1694.

10. Report on March of Labor, Committee on Un-American Activities, 83rd Congress, 2d Session, December 22, 1954.

11. Hearings Before the Committee on Un-American Activities, House of Representatives, 83rd Congress, 2d Session, Investigation of Communist Activities in the Chicago Area—Parts 1, 2, 3.

12. Hearings Before the Committee on Un-American Activities, House of Representatives, 83rd Congress, 1st Session, Communist Methods of Infiltration (Education—Parts 3, 4).

13. Hearings Before the Committee on Un-American Activities, House of Representatives, 82nd Congress, 2d Session, Communist Activities in the Chicago Area—Part 2.

DEFTS. EXHIBIT No. 6A (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

COMMITTEE ON UN-AMERICAN ACTIVITIES

Annual Report for the Year 1954

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3 In addition to the hearings and reports of the committee during 1954, there has been continued the singularly valuable service provided to Members of Congress, congressional committees, and duly authorized agencies of the Federal Government by the committee's files and reference service. With the ever-increased interest aroused by the expanded knowledge of subversive activities, there has been a proportionate increase in requests for information from the committee.

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7 The committee became interested in the Riley case in December 1953. On January 27, 1954, Riley's employment with the Federal Government was terminated, effective February 1, 1954. On March 15, 1954, Riley appeared before the committee in Chicago, Ill., at which time he again denied Communist Party membership and the other allegations. The committee was able to obtain another witness for the Chicago hearing who admitted having been

a member of the Communist Party in Spokane and having also been in the same Communist Party group with Riley. The fact that Riley was an active member of the Communist Party in Spokane was later substantiated by the testimony of Barbara Hartle, a long-time Communist Party functionary in the Northwest area. Mrs. Hartle appeared before the committee in June 1954 in Seattle and furnished information regarding Riley, plus invaluable information concerning Communist Party activities in general in the Northwest area.

• • • • • • •

14 These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Mich., in 1952. As a matter of fact, in 1952 the committee reported that 15 during its investigation the identity of over 600 individuals as Communist Party members was obtained.

• • • • • • •

17 During the committee's investigation, it uncovered members of the Communist Party holding influential positions in the school systems of Detroit and other communities. Most of the teachers subpenaed before the committee refused to answer questions with respect to their membership in the Communist Party, on the ground that to do so would tend to incriminate them. Most of the teachers called have been suspended or permanently removed from their positions. The Committee on Un-American Activities approves of this action because the committee has found that the delivery of a student into the tutelage of a member of the Communist Party has been responsible for the destruction of thousands of American homes.

• • • • • • •

18 The committee was fortunate in receiving testimony from a witness whose knowledge of Communist

Party activities was current almost to the date of the hearings. The committee received lengthy testimony from Mrs. Barbara Hartle, who had been a member and official of the Communist Party in the Pacific Northwest area from 1933 until early 1954 and gained a position of such importance in the Communist Party that the Government of the United States arrested her on September 17, 1952, on the charge that she had violated the provisions of the Smith Act.

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The House Committee on Un-American Activities held hearings in Portland, Oreg., June 18 and 19, 1954. The hearings and investigation centered largely around communistic infiltration of education, professional groups, and labor. The committee received valuable testimony from Homer LeRoy Owen, Barbara Hartle, and Robert Wishart Canon, all of whom testified about Communist activities and infiltration not only in Portland, Oreg., but throughout the Northwest and other parts of the United States.

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DEFTS. EXHIBIT No. 6(B) (ident.)

Filed July 18, 1955. Harry M. Hull, Clerk

ANNUAL REPORT OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES

For the Year 1953

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In this connecttion, it should be pointed out that there was no instance in which the committee endeavored in any way to ascertain the curricula of any school or to in any manner examine classroom procedures or the teaching methods of an educator. The focal point of the investigation into the general area of education was to the individual who had been identified as a past or present member of the Communist Party.

1

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3 The House committee on Un-American Activities has remained vigilant to determine whether there are any individuals now employed by the United States Government who are present or past members of subversive organizations. In the hearings conducted by the subcommittee in Albany, N. Y., testimony was received from two former members of the Communist Party that the Commissioner of the Federal Mediation and Conciliation Service in Cincinnati, Ohio, had been known to them as a member of the Communist Party. In the investigation of this matter it was determined that this Federal employee, James F. McNamara, had, on the basis of previous investigation by the Federal Bureau of Investigation, been given three loyalty hearings to determine his suitability to continue in Government service. On all three occasions McNamara had
4 denied that he had ever been a member of the Communist Party and, in the face of FBI information to the contrary, he was cleared. Shortly after he had been served with a subpena to appear before the committee, McNamara submitted his resignation to the Federal Mediation and Conciliation Service. When he did appear, McNamara admitted that he had been a member of the Communist Party and had broken with it some years ago. The committee believes it to be a fact that James F. McNamara did break with the Communist Party as he stated under oath. However, his case serves as an example of the continuing necessity for the work being performed by the House Committee on Un-American Activities. The Federal Bureau of Investigation had conducted a thorough inquiry and had in due course reported the results of its investigation to the proper authorities. However, in the face of F. B. I. reports, no further steps were taken by the agency concerned, and it was not until investigation by this committee that the true facts were determined and McNamara's employment terminated.

. . . . . .

6 This committee is established by the Congress of the United States and has been cloaked by that body with wide power under Public Law 601. It is one of the

weapons in the hands of the American people. Who dulls the edge of that weapon brings joy to the hearts of those whose dedicated task it is to destroy the Constitution of the United States and place human freedom behind barbed wire.

. . . . . .

57 INVESTIGATION OF COMMUNIST ACTIVITIES IN THE NEW YORK CITY AREA

. . . . . .

One of the most valuable witnesses was Mrs. Dorothy K. Funn, who is presently a teacher in the New York City public school system. Mrs. Funn has been engaged in the teaching profession since 1923, except for a period of about 4 years from 1943 until 1947. Mrs. Funn stated that she had joined the Communist Party in May 1939 and had remained a member until about June 1946.

. . . . . .

60 It would be a great step in the progress of the committee's work if all persons, who find themselves in circumstances similar to those of Artie Shaw, would realize that all they need do is communicate with the committee, the chairman, or its members in order to clarify or elaborate on any information the committee possesses relative to themselves.

. . . . . .

99 As in every instance of this kind, where a person feels that there is erroneous information, or information that might require clarification, the committee is pleased to take every reasonable step to insure that the information is corrected or clarified.

. . . . . .

100 At this point, the appreciation of the committee is extended to both Dr. Bella V. Dodd and to Dorothy K. Funn for their further testimony, given in the hearings held in Philadelphia.

. . . . . .

127 CONSUMERS' UNION

It will be noted in other sections of this report that the committee has made every effort to alert individuals and organizations who feel that their names are unjustly reflected in the committee's records or testimony to communicate with the committee to rectify or clarify their position.

A very tangible example of the success that the committee has gained in these efforts relates to Consumers' Union, which is the publisher of Consumer Reports. This organization, on the basis of information in the committee records, had been cited by the Special Committee on Un-American Activities in 1944. Steps were initiated by Consumers' Union through its officers and legal counsel to clarify this situation. After hearings and thorough study the committee finds there is no present justification for continuing this organization as one that is cited, and future reports and publications will reflect that this organization has been deleted from the list of subversive organizations and publications.

It cannot be pointed out too frequently that the fact that an organization has been cited as subversive or as a Communist front does not mean that such citation is irrevocable. Steps such as those taken by Consumers' Union, can lead to a proper clarification by the committee.

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132 FILES AND REFERENCE SERVICE

For a number of years this committee has maintained a specialized reference service in the field of subversive activities insofar as furnishing any information that may appear on a given subject in the committee's own public records, files, and publications. This service is available at present only to Members of Congress, the representatives of the executive branch of the Government, and, of course, to all staff members of this committee, varying somewhat according to type and amount of material found and the needs of the person seeking the information.

Due to the confusion that has arisen as to the nature of the committee's files, it should be stated that the material

from which reports are prepared for Members of Congress and other authorized committees and agencies is compiled from public sources such as newspapers, magazines, authenticated letterheads, and other documents available from public sources, and could be compiled by personal research on the part of any individual. These files are distinguished from the investigative files, which material is not available to anyone except the committee investigators themselves.

It should be noted that no information which is voluntarily given by individuals or groups is incorporated into these files unless the source and nature of the material has been adequately checked to insure its accuracy and validity.

Each report that is furnished from the committee's files contains the following disclaimer:

The public records, files, and publications of this committee contain the following information concerning (organization/individual). This report should not be construed as representing the results of an investigation by, or findings of, this committee. It should be noted that the individuals and/or organization referred to above are not necessarily Communist, Communist sympathizers, or fellow travelers, unless otherwise indicated.

The Members of Congress make constant use of this service with queries ranging all the way from a request for the prompt verification of a single point or a brief summary of available material to the submission of a list of both individual and organization names for a complete check and full report on each item. In every case, a complete check of the pertinent indexes and source material must be made before an answer is supplied, but the answer may be given in either verbal or written form, verbal answers being employed only when so requested and the material may be summarized briefly and easily or when a check has shown that we have no information to report on the subject. The more usual type of request, however, is for a complete written report setting forth not only what has been found but also where each reference appears.

Much the same conditions prevail in regard to supplying information to the committee's staff members, who, al-

though they often wish to examine or borrow the source material itself, also need that information assembled
133 for them into readily accessible written form to use in connection with the extensive investigations being conducted under direction of the committee.

On the other hand, the executive departments and agencies, which are required by Executive order to make a check of the committee's files, send their own representatives to make the check of the indexes to the material contained in the files and publications. The staff of this section is required to furnish these agents only such reference service as is involved in the pointing out of reference sources, explanation of how the material indexed is recorded on the index cards, and the withdrawal of exhibit material from files for their examination when specifically authorized to do so.

Neither the extent of subject matter contained in the reference questions nor the time and work involved in furnishing the answers can be reduced to figures. The following statistics, however, do indicate something of the steady overall growth in demand for the service.

A count has shown that a total of about 3,800 requests for information on 10,695 individuals and 2,459 organizations were received and answered by this section during the past year. This resulted in the furnishing of written reports covering 7,687 individuals and 882 organizations, and, as compared to the 1952 count, represents an increase of 200 in the total number of requests received, with 1,195 more individual and 459 more organization names included in the requests. A further comparison of figures for the 2 years has shown 2,338 requests received from and 1,285 written reports supplied to the Members of Congress as against 2,400 requests received and 1,440 written replies to them in 1952, a small decrease which may have been caused by a change in the office procedure of handling requests.

The total number of visits made to the files by the designated representatives of the executive departments and agencies has shown a decline from 6,260 in 1952 to 4,880 in 1953. This does not indicate any lessening of interest in or use of the committee's reference material as it may seem to

appear on the surface, for the average length of each visit has increased appreciably with more persons than ever before assigned full time to the checking of our records.

Equally important, though not always remembered, is the fact that such reference service, to be reliable, requires the proper care and handling of old material as well as the constant acquisition and proper classification, cross referencing and indexing of new material. The age and volume of the committee's valuable collection of pamphlets, periodicals, books, newspapers, leaflets, letterheads, and other source material both primary and secondary has presented problems of housing, handling, and processing which continue to increase in difficulty in direct proportion to those factors. Pressure of work has not afforded time for keeping an accurate running count of the amount of file material acquired, the number of index cards added, or the number of pieces classified and processed for files. However, it seems fair to estimate that the acquisition, classification, and indexing of th Communist press source material has kept apace of other years and that approximately 4,000 pages of the printed hearings and reports of this committee, already indexed, have been added as compared to the 2,827 pages of publications received and indexed by this section in 1952.

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DEFTS. EXHIBIT No. 6(C) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

ANNUAL REPORT OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES

For the Year 1952

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6 In this annual report, the committee feels that the Congress and the American people will have a much clearer and fuller picture of the success and scope of communism in the United States by having set forth the names and, where possible, the positions occupied by indi-
7 viduals who have been identified as Communists, or former Communists, during the past year. In the matter of hearings relating to the motion-picture industry and professional groups, the committee is including those

individuals who were named during 1951, inasmuch as these hearings have been of a continuing nature.

8 The Government can render valuable assistance to Harvester and all other workers represented by Communist-dominated unions and can assist UAW and other non-Communist internationals in cleaning out their locals which are heavily infiltrated or controlled by members of the Communist Party.

12 The hearings show that great strides have been made in removing them from the other auto locals. In congratulating the workers in these locals for ridding themselves of Communist leadership, the committee wishes to point out that evidence uncovered during the invetsigation discloses that Communists formerly employed in white-collar positions are taking up trade work and, as unknowns in the community, are obtaining employment in the auto industry. Some of these are already working within various locals.

40 COMMUNIST INFILTRATION OF HOLLYWOOD MOTION-PICTURE INDUSTRY

The committee originally instituted an investigation to ascertain the scope and success of Communist efforts to infiltrate the motion-picture industry in 1945. As the result of this early investigation, hearings were held in 1947, at which time the committee subpenaed 10 persons associated with the industry who had been identified as members of the Communist Party. At that time these 10 persons refused to answer all questions concerning their Communist associations, as a result of which they were cited for contempt of Congress and all received and served jail sentences.

The committee wishes to urge that all fields of entertainment and culture maintain a steadfast vigilance in order to avoid the possibility of further Communist infiltration into them.

57 The following individuals, who have been identified as members of the Communist Party, are being listed as having been associated with the various professional groups in the Los Angeles area. It is recognized that in many instances the identifying information does not classify the individual as being engaged in a profession but since the testimony was received from individuals whose principal information deals with professional groups they are being included herein. It should also be noted that with these identifications it does not necessarily indicate the present position or occupation of the individuals but indicates the identification furnished by the witness.

* * * * * * *

DR. EDWARD U. CONDON

Dr. Edward U. Condon was appointed director of the National Bureau of Standards in November 1945. This appointment was made even though it was known at that time by the executive branch of Government that Dr. Condon had not been permitted to visit Soviet Russia and that a passport issued by the State Department had been revoked upon the request of intelligence authorities.

Dr. Condon had, early in the development of nuclear fission, been offered a position on the atomic bomb project at Los Alamos, N. Mex. After a short while, Dr. Condon rejected that appointment voicing his disdain for the security regulations which were necessary at Los Alamos.

During the course of its investigations to ascertain the extent and success of Soviet espionage activities relating to the atom bomb, the committee was amazed at the numerous instances in which it was disclosed that Dr. Condon was acquainted with known and suspected espionage agents.

The committee did not, nor does it now, possess information that Dr. Condon was a Communist or committed any act of espionage. However, because of his asso-
74 ciates and disdain for security regulations the committee recognized his vulnerability in any post of security. For this reason the committee issued a report in 1948 setting forth the information it possessed concerning Dr. Condon's associations. It was hoped that Dr. Condon would voluntarily resign but if he did not it should serve as a warning to Dr. Condon as well as security officers that his associations disqualified him from access to classified material.

* * * * * * *

Dr. Condon's appearance, however, served to confirm the committee's belief that because of his propensity for associating with persons disloyal or of questionable loyalty and his contempt for necessary security regulations, that he is not qualified for acceptability to any security position.

* * * * * * *

77 The reference service furnished during the year has shown a steady increase, reflecting a greater growth in the amount of information requested and furnished than in the actual number of separate requests made. Records show that well over 3,600 inquiries involving about 9,500 individuals and approximately 2,000 organizations were answered in 1952, an increase of about 300 in number of requests, 1,800 in number of individual names involved, with the number of organizations concerned remaining the same. The figures cannot show, however, that answers in most instances were naturally longer because more information had been accumulated and made available for use during the year, nor can numbers reveal the type and quality of the reference service.

Since the files of the committee are not open for personal consultation by anyone other than the committee's own employees and the designated representatives of the executive branch of the Government, a very specialized reference service is furnished the Members of Congress. Written requests are preferred in the interest of accuracy, but telephone inquiries from Members' offices are also accepted daily. These inquiries are handled by trained staff members who consult all indexes and files for all available in-
78 formation on the subject or subjects under consideration. They then review, compile, and report the pertinent information as it appears in the committee's own public hearings and reports and public documents contained in the committee's files. A total of 1,440 written reports were sent to Members of Congress in 1952, and a conservative estimate of the number of pages of such written memoranda would run over 10,000. This does not include written replies in cases where no information was found on the subject of the request.

* * * * * * *

A certain amount of reference service has also been furnished this year in answering some requests made by pri-

vate individuals who showed a sincere and genuine need for information of the type which is available here. Answers to such inquiries were necessarily greatly restricted both as to number and as to length of answer because our staff is not large enough to supply any considerable service of this kind.

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DEFTS. EXHSBIT NO. 6 (D) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk.

ANNUAL REPORT OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES

For the Year 1951

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1 The committee has also frequently invited any person named in testimony before the committee as being a member of the Communist Party or Communist-front organization, to come before the committee to either affirm or deny the statements made concerning him.

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2 Hearings conducted in 1947 resulted in the identification of 10 persons associated with the motion-picture industry as members of the Communist Party.

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It was the hope of the committee, after having conducted the 1947 hearings, that the motion-picture industry would accept the initiative and take positive and determined steps to check communism within the industry. Unfortunately, however, the spokesmen for the industry persisted at that time in painting an unrealistic picture of communism in Hollywood and some, at least, would have had the American public believe that there was no such thing as organized communism in the motion-picture industry.

The committee pursued its established policy that whenever it is obvious that a responsible group, whether in industry, labor, or independent organization, does not perform its duty in guarding itself against Communist influence, then the committee must expose this defect. So it was with the motion-picture industry. The committee's hearings in 1951 resulted in the identification of more than 300 persons associated with the industry as members of the Communist Party. There were varying opinions given by witnesses as to the success of the Communists in influencing

the content of motion pictures. The fact was evident that such efforts were made.

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4 The committee called Oliver Edmund Clubb, a Foreign Service officer of the State Department, who, at first questioning, could recall none of the facts related by Chambers. Subsequently, through the use of old diaries, Clubb did recall the incident and verified in almost every aspect the circumstances as related by Whittaker Chambers. The committee has learned that Mr. Clubb's suitability for continued employment is presently under consideration by the State Department.

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5 During the past year, this committee has been subject, as have many congressional committees in the past, to the efforts of various pressure groups. The committee recognizes that for the most part all of the American public is interested in the proper identification of Communists and Communists endeavors. The committee, however, cannot lend itself to any selfish aims to discredit or defame any persons or groups. To this end, the committee must affirm its directed aims to investigate subversive and un-American activities, and takes this opportunity to invite any person having definite information concerning the identities of any Communist or knowledge of subversive endeavors to furnish such information to the committee.

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9 During the 1951 hearings of the committee dealing with the Hollywood motion-picture industry, there were more than 300 persons connected with the industry who were definitely identified as members of the Communist Party either past or present.

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16 History alone will show how many of Professor Struik's students were led by him down the road to communism, from which they were unable to return until they had performed acts against their country and fellow citizens. The administrators of the Massachusetts Institute of Technology share equally, if not more so, the responsibility for leading these young people away from American ideals and democratic principles.

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26 It is estimated that they have checked three-quarters of a million names through our indexes this year and have consulted an average of well over a hundred pieces of file material daily.

Statistics alone cannot show the total value of service provided. So in conclusion, it should be emphasized that during the year 1951 valuable source material was acquired and incorporated in the files, and a larger volume of reference service than in any previous year was provided by the files' staff to Members of Congress, the various agencies of the executive branch of the Government, and other members of the committee staff.

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DEFTS. EXHIBIT No. 6(E) (ident.)

Filed July 18, 1955. Harry M. Hull, Clerk.

ANNUAL REPORT

OF THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

For the Year 1950

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4 While this legislation cannot be retroactive, the committee intends to devote a major share of its efforts to a continued investigation of the persons who have engaged in espionage, and the proof of their activities. As illustrated by the Scientist X case, this is a long, tedious process. A score of witnesses in the Scientist X case have ben located and subpenaed by the committee. Prosecution is not yet possible because a majority of these witnesses refuse to cooperate with their Government, even though they themselves are not involved in any espionage activities, by refusing to answer questions relating to their Communist Party activities on the ground of self-incrimination.

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An extensive investigation was conducted into the activities of Agnes Smedley. The committee planned to subpoena, and expose the activities of, Agnes Smedley upon her return from England, but, because of her death, the results of this investigation have not been made public.

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41 The committee has made readily available, as a reference facility, a collection of lists of signers of Communist Party election petitions, obtained from original petitions or photostatic copies of original petitions which contain 363,119 signatures for various years in 20 States. Its reference collection includes information and documentary evidence collected by staff investigators, official records obtained from other agencies, and data supplied by law-enforcement agencies.

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42 Dossiers and reports have been compiled from information on file for the use of committee members and staff investigators.

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The consolidated card files of the committee now contain more than half a million card references which serve as an index to source material on file.

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43 During the year 1950, reference collections of the committee were consulted by representatives of various investigative units of the following agencies:

Bureau of the Census
Central Intelligence Agency
Department of Agriculture
Department of the Air Force
Department of the Army
Department of Commerce
Department of the Interior
Department of Justice
Department of Labor
Department of the Navy
Department of State
Department of the Treasury
Displaced Persons Commission
Economic Cooperation Administration
Federal Bureau of Investigation
General Services Administration
Metropolitan Police Department
National Security and Resources Board
Securities and Exchange Commission
United States Civil Service Commission
United States Coast Guard
United States Secret Service

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DEFTS. EXHIBIT No. 6(F) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

ANNUAL REPORT

OF THE

COMMITTEE ON UN-AMERICAN ACTIVITIES FOR THE YEAR

1949

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15 The committee would like to remind the Congress that its work is part of an 11-year continuity of effort that began with the establishment of a Special Committee on Un-American Activities in August 1938. The committee would also like to recall that at no time in those 11 years has it ever wavered from a relentless pursuit and exposure of the Communist fifth column.

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18 The files of the committee compose one of the most comprehensive records in the United States concerning individuals active in subversive groups, the programs and aims of un-American organizations, and their propaganda methods.

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19 During the year 1949, some 75,000 cards were added to the consolidated card records of the Committee, which now contain 470,000 card references to activities and affiliations of individuals. These cards serve as an index to source material contained in periodicals, hearings, reports, pamphlets, and miscellaneous exhibit material in file. * * * These indexes and the consolidated card record file facilitate investigative work by members of the staff and authorized personnel from other agencies.

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In the course of its investigations into aims and organization of the Communist Party in the United States, the committee has made available a large, completely indexed, and readily accessible reference collection of lists of signers of Communist Party election petitions, which is consulted daily by investigators from various Government agencies

as well as staff members. These lists, obtained from original petitions or photostatic copies of original petitions, contain 363,119 signatures for various years in 20 States.

Of the 363,119 signatures, some 335,660 have been indexed and printed by the committee. The committee has published printed lists of signers of election petitions of the Communist Party for 1940 in the following States: Arizona, California, Connecticut, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin.

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Throughout the year, individual files have been maintained on some 3,500 leaders of the Communist Party and its various front organizations, and individuals active in Fascist movements.

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46 . In connection with reports issued from time to time, the Committee on Un-American Activities is cognizant of the fact that supporters of Communist-front organizations and even members of the Communist Party, become disillusioned and aware of the true nature of the movement. In fact it is an objective of the committee to hasten such disillusionment and reeducation. The committee endeavors in its files and reports to record such repudiation wherever possible, and whenever there seems to be convincing evidence of genuine sincerity.

In other cases where the committee may have erred in reference to an individual or an organization, it desires to amend its records in order to avoid any injustice.

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DEFTS. EXHIBIT NO. 6(G) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk.

THIS IS YOUR HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES

17 *71. Of what value has the House Committee on Un-American Activities been in exposing subversive activities?*

For a period of many years, the House Committee on Un-American Activities was the only Federal body that was fur-

nishing the Congress and the American people with information relating to subversive activities. The true facts of Soviet espionage operations were known to the FBI, but it was powerless to act because of administration restrictions. The committee, through its investigations, hearings, and reports, has over the past years exposed many of these espionage operations. The committee has distributed hundreds of thousands of printed hearings and reports, and held hearings throughout the United States exposing subversive activities, and gathering information upon which Congress has based legislation.

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18 *76. Has the committee actually had the names of more than a handful of persons who were members of subversive groups?*

Since 1948, the committee has had positive identifications of 4,151 persons who were members of the Communist Party in the United States. Of this total number, 2,381 have been named during this 83d Congress by witnesses under oath before the committee.

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25 *105. How has the committee assisted in disclosing the operations of the Communist Party and its fronts?*

This committee and the special committee have over the past 16 years held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts.

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DEFTS. EXHIBIT No. 6 (H) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

100 THINGS YOU SHOULD KNOW ABOUT COMMUNISM

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19 Exposure in a systematic way began with the formation of the House Committee on Un-American Activities, May 26, 1938.

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67 *2. Well, aren't the unions being investigated by your committee?*

No. Investigating unions, as such, is NOT the committee's job, and so the committee does not do it.

The House Committee on Un-American Activities was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job, and to that job it sticks.

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71 However, this committee, the Department of Justice, and other official agencies issue from time to time lists of Communist-front organizations and outright Party groups.

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76 *48. How can Communism be stopped, here?*

First, detect the Communists at work around you. Second, expose them and all their connections. Third, wherever possible, force their prosecution under the laws of our country.

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125 (Reference on p. 81.)

Congress of the United States,
House of Representatives,
Committee on Un-American Activities,
Washington, September 21, 1950.

Release

In a report dated March 29, 1944, the Special Committee on Un-American Activities listed the *United Gas, Coke and Chemical Workers of America* as an organization in which "Communist leadership is strongly entrenched." In a publication issued in December, 1948, entitled "100 Things You Should Know About Communism and Labor" the Committee on Un-American Activities repeated the foregoing state-

ment in answer to the question "What Unions have the Communists controlled."

Upon request of the officers of this union a subcommittee of this committee, on August 17, 1950, heard the testimony of Mr. Martin Wagner, President of the organization. From this evidence the committee finds:

(1) The *United Gas, Coke and Chemical Workers of America* has taken energetic and effective measures to eliminate such influence.

(2) All persons against whom substanitial evidence of Communist activities or views exists in the records of the Committee on Un-American Activities, have been removed as officers.

(3) The charters of local unions found by the parent organization to be following the Communist Party line have been revoked.

(4) According to a constitutional amendment adopted by the union, no person who is a member of a Communist, Nazi, or Fascist organization may be a member of the executive board or an employee of this union.

Upon this testimony, the Committee on Un-American Activities has adopted a resolution providing:

(1) The name of the *United Gas, Coke and Chemical Workers of America* shall be dropped from future editions of the committee pamphlet "100 Things You Should Know About Communism."

(2) No additional copies of the present issue of any committee publication containing reference to this union shall be issued without notation that the statement about the union is no longer true.

126 (3) Any statement by any person to the effect that this committee now finds that the *United Gas, Coke and Chemical Workers of America* under its present officers and bylaws, to be under Communist influence or leadership, is unauthorized and untrue.

(4) That a copy hereof, over the signature of the committee chairman shall be furnished the union.

The foregoing is a copy of the action taken by the Committee on Un-American Activities on the report of its subcommittee appointed to hear the testimony of Mr. Martin Wagner, President of the United Gas, Coke and Chemical Workers, CIO.

JNO S. WOOD,
Chairman, Committee on Un-American Activities

DEFTS. EXHIBIT No. 6 (I) (ident.)

Filed July 18, 1955

ORGANIZED COMMUNISM IN THE UNITED STATES

* * * * * * *

1 This seeming paradox is at least partially explained by the fact that a major segment of anti-Communist opinion has remained apathetic, or at least passive and inarticulate, largely because the great American public has no real understanding of the Communist threat—and for the further reason that a considerable aggregation of self-serving, self-proclaimed "anti-Communists" are actually helping the Communist cause by their continuous carping criticism of every honest effort to expose and combat Communist subversion—a situation which likewise is flourishing because of a lack of public appreciation of Communist methods and objectives.

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DEFTS. EXHIBIT No. 6 (J) (ident.)

Filed July 18, 1955

REPORT ON THE MARCH OF LABOR

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23 The foregoing report has sought to spotlight the Communist Party members and Communist purposes

behind the innocuous-sounding publication, the *March of Labor*. Since a Communist "front" is aimed primarily at deceiving loyal Americans into doing the party's work, such a project cannot long exist once its true purposes are known.

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DEFTS. EXHIBIT No. 6(K) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

INVESTIGATION OF COMMUNIST ACTIVITIES IN THE CHICAGO AREA—PART 1

HEARING BEFORE THE
COMMITTEE ON UN-AMERICAN ACTIVITIES
HOUSE OF REPRESENTATIVES

Eighty-Third Congress
Second Session

. . . . . .

4166 Every witness who has been subpenaed to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States. The first witness to be called for appearance today, while not having information relating directly to activities within the midwestern area, possesses information relative to activities in our great neighboring areas to the northwest. While the committee has scheduled hearings to be held in Albany, N. Y.; San Diego, Calif.; and Detroit, Mich., it is felt that this witness whose information we hope will be of assistance to us, should be able to advise you of activities both on the west as well as on the east coast.

I have appointed my good friend and colleague, Representative Gordon H. Scherer of Ohio, another very good friend and colleague, Mr. Morgan Moulder of Missouri, and myself as chairman.

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DEFTS. EXHIBIT No. 6(L) (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

INVESTIGATION OF COMMUNIST ACTIVITIES IN THE CHICAGO AREA—PART 2

HEARING BEFORE THE
COMMITTEE ON UN-AMERICAN ACTIVITIES
HOUSE OF REPRESENTATIVES

Eighty-Third Congress
Second Session

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4243 Testimony of Walter Rumsey

Mr. Rumsey: Walter W. Rumsey.
Mr. Kunzig: R-u-m-s-e-y?
Mr. Rumsey: Right.
Mr. Kunzig: And your present address, Mr. Rumsey?
Mr. Rumsey: Moline, Route 1.
Mr. Kunzig: Moline, Ill.?
Mr. Rumsey: Moline, Ill.
Mr. Kunzig: Route 1?
Mr. Rumsey: Route 1.
Mr. Kunzig: What is your present employment, sir?
Mr. Rumsey: Painter.
Mr. Kunzig: Where?
Mr. Rumsey: John Deere Plow Works, in Moline, Ill.
Mr. Kunzig: How do you spell that Deere?
Mr. Rumsey: D-e-e-r-e.
Mr. Kunzig: John Deere Plow Works?

Mr. Rumsey: Plow works.

Mr. Kunzig: How long have you been employed by the John Deere Plow Works?

Mr. Rumsey: Since 1937.

Mr. Kunzig: And this is in Moline, Ill.?

Mr. Rumsey: It is in Moline, Ill.

Mr. Kunzig: Where were you born, Mr. Rumsey?

Mr. Rumsey: Milwaukee, Wis.

Mr. Kunzig: What year?

Mr. Rumsey: 1894.

Mr. Kunzig: Are you now a member of the Communist Party, Mr. Rumsey?

Mr. Rumsey: No.

Mr. Kunzig: Have you ever been a member of the Communist Party?

Mr. Rumsey: Yes.

Mr. Kunzig: When did you join the party?

Mr. Rumsey: 1942, the last part of 1942, 1943.

Mr. Kunzig: Where did you join?

Mr. Rumsey: Rock Island, Ill.

Mr. Kunzig: Would you explain to the committee, please, the circumstances under which you joined the party?

Mr. Rumsey: Well, I was chairman of a local union in the John Deere Plow Works. I had a series of operations, and I was incapacitated to the heavier work. So I took within the Farm Equipment Union an organizing job in that union. And in that respect became and was involved in the union and with the Communists within the union, and was recruited into the party.

Mr. Kunzig: Who recruited you into the Communist Party, Mr. Rumsey?

4244 Mr. Rumsey: John T. Watkins. He was then district president of the FE-CIO.

Mr. Kunzig: Would you give the full name of that union, please?

Mr. Rumsey: United Farm Equipment and Metal Workers, CIO, at that time.

Mr. Kunzig: And do you know where he is today, if it lies within your knowledge?

Mr. Rumsey: No, it doesn't. His home is in Rock Island.

Mr. Kunzig: Rock Island?

Mr. Rumsey: Yes.

Mr. Kunzig: Do you know whether he is connected with any union activity today?

Mr. Rumsey: Yes, he took a few of the locals within the UE-FE, which the CIO expelled, and then they emerged from the UE, and from there he took 3 or 4 locals to himself, and they are about to have elections for going back to the CIO.

Mr. Kunzig: Would you explain just how he recruited you, how this John T. Watkins recruited you into the Communist Party?

Mr. Rumsey: Well, first, they were quite free with the dollar at the time. Secondly, I was told that a good organizer should be with the party so that they could follow the old party line.

Mr. Kunzig: A good labor organizer should be with the Communist Party to follow the Communist Party line?

Mr. Rumsey: That is right.

Mr. Kunzig: Did he tell you at that time that he was a member of the Communist Party himself?

Mr. Rumsey: No, he didn't say that he was.

Mr. Kunzig: But you found him to be when you got in, is that right?

Mr. Rumsey: That is right.

Mr. Kunzig: Now, how long did you belong to the Communist Party?

Mr. Rumsey: It would be in 1944, August, when I left.

Mr. Kunzig: To whom did you pay dues in the party?

Mr. Rumsey: Well, it would be the various organizers, that is the district organizers.

Mr. Kunzig: Did you ever pay dues to Mr. Watkins?

Mr. Rumsey: Yes.

Mr. Kunzig: Was this at the beginning?

Mr. Rumsey: At the start.

Mr. Kunzig: Do you recall how much dues you did pay?

Mr. Rumsey: Well, it was on the percentage. It was prorated percentagewise.

Mr. Kunzig: How much money you made, is that right?

Mr. Rumsey: That is right.

Mr. Kunzig: And then later on, I presume, you paid dues to the party functionary in the district, is that right?

Mr. Rumsey: That is right; yes.

Mr. Kunzig: Do you recall any of the names of those people?

Mr. Rumsey: Yes. Warner Betterson.

Mr. Kunzig: What is the name again.

Mr. Rumsey: Warner Betterson.

Mr. Kunzig: How do you spell the last name?

Mr. Rumsey: I will have to refer here——

4245 Mr. Kunzig: Are these notes of your own?

Mr. Rumsey: Yes; they are my own. Are they all right?

Mr. Kunzig: Go ahead.

Mr. Rumsey: It has been quite a while. B-e-t-t-e-r-s-o-n.

Mr. Kunzig: I see. And you paid dues to him?

Mr. Rumsey: Yes. Another one I paid dues to was Joan Steel.

Mr. Kunzig: Who was this Betterson and who was Joan Steel?

Mr. Rumsey: One followed the other. Betterson was the district organizer of the district of Iowa, Nebraska, and a portion of Illinois, the Quad Cities of Illinois. When he left, this Joan Steel became the organizer at that time, as the district functionary.

Mr. Kunzig: What branch of the Communist Party did you belong to?

Mr. Rumsey: The industrial group.

Mr. Kunzig: What was it? Would you describe to the committee the main purpose and activities of that branch of the party? What were they trying to do for the Communist Party?

Mr. Rumsey: Well, what they were striving to do was to disrupt mainly, to set their program of propaganda, to get the shop workers acclimated to the Daily Worker, and that was the function of the organizer.

Mr. Kunzig: What positions did you hold, Mr. Rumsey, in the Communist Party in your area?

Mr. Rumsley: Well, in 1943, I was the Quad City industrial district organizer.

Mr. Kunzig: Quad City industrial district organizer?

Mr. Rumsey: Yes.

Mr. Kunzig: During that time, did you hold any official position with the FEUE-CIO?

Mr. Rumsey: I was organizer for the union, too, yes; for that union.

Mr. Kunzig: Did it ever get confusing as to who you were working for.

Mr. Rumsey: It was one and the same.

Mr. Kunzig: One and the same?

Mr. Rumsey: Yes.

Mr. Kunzig: Could you explain that a little bit?

Mr. Rumsey: Well, the party line, of course, had to be adhered to at union meetings in order to get our so-called pieces of legislation passed by the people in the shop, so that we had to organize before each meeting, our people, the Communists, in order for them to understand. This may sound a little silly, but nevertheless, we may put one piece of legislation before a union, a local union today, and change it tomorrow, so that I mean we had to be on our toes on this.

Mr. Kunzig: You were following, of course, the Communist line?

Mr. Rumsey: That is right.

Mr. Kunzig: Could you tell us specifically what your duties were as organizer for the Communist Party?

Mr. Rumsey: Well, to recruit, and to recruit new members, hold study groups, clubs as they called it, study clubs in the evenings, and then as I say, keep our people in the shop, what Communists we had, to lead the union meetings, and dominate them.

Mr. Kunzig: Did you personally attend any Communist Party conventions?

4246 Mr. Rumsey: Yes; in Des Moines, Iowa, in 1943, 1944, I think it was, in the spring of 1944.

Mr. Kunzig: What activity did you have there, if any specific one?

Mr. Rumsey: I was there; I was appointed to the district committee.

Mr. Kunzig: What was that?

Mr. Rumsey: Of the Communist Party.

Mr. Kunzig: In what area?

Mr. Rumsey: In Iowa, Nebraska, and Illinois.

Mr. Kunzig: Did you ever solicit memberships? Did you ever get other people to join the party?

Mr. Rumsey: Yes; a few.

Mr. Kunzig: Before we go into the various people that you solicited into the party, the people from whom you may have collected dues, I think, Mr. Chairman, this might be the moment for a 5-minute recess.

Mr. Velde: The committee will be in recess for 5 minutes.

(Whereupon a brief recess was taken.)

Mr. Velde: The committee will be in order.

Proceed, Mr. Counsel.

Mr. Kunzig: Mr. Rumsey, you mentioned that you had solicited people into the Communist Party. Would you tell us the names of some of the people whom you solicited?

Mr. Rumsey: Gus; I think it is Peter Gustafson. He goes by the name of Gus.

Mr. Kunzig: Gustafson?

Mr. Rumsey: That is right.

Mr. Kunzig: Who or where is he?

Mr. Rumsey: He is an employee of the John Deere Plow Works, secretary of the UE Union, secretary of that local in the UE Union.

Mr. Kunzig: Who else?

Mr. Rumsey: Donald O. Spencer.

Mr. Kunzig: He already has appeared and testified before this committee; is that correct?

Mr. Rumsey: That is correct.

Mr. Kunzig: Did you collect dues, too, from people for the Communist Party?

Mr. Rumsey: Well, I collected dues as the district organizer for that district after being made such for the industrial group, that is, all organizers, John Watkins, alias Sam Brown.

Mr. Kunzig: That is the John Watkins you mentioned a few moments ago?

Mr. Rumsey: That is right, one and the same.

Mr. Kunzig: He has an alias?

Mr. Rumsey: Sam Brown.

Mr. Kunzig: But they are the same person?

Mr. Rumsey: That is his Communist Party name, Sam Brown.

Mr. Kunzig: I see.

Mr. Rumsey: That is what he—and then there were others, Harold Fisher.

Mr. Kunzig: Harold Fisher.

Mr. Rumsey: Charles Hobbe.

Mr. Kunzig: Who was Harold Fisher?

Mr. Rumsey: He was a district organizer, in the district for the union.

4247 Mr. Velde: May I ask, was it a common practice in that particular unit of the Communist Party to use an alias?

Mr. Rumsey: Yes. In all the various Communist cells or clubs, it is very common.

Mr. Velde: What was the purpose of using aliases generally? At that time, did the members of the Communist Party particularly in the labor unions, as officials, have the feeling they were doing something wrong or something secretive?

Mr. Rumsey: That was my question to them, too. Yes, they did. From the time that I joined, I took the position that if I was joining it, I would be one, and I didn't care who knew it. But they used their aliases, and apparently had something to hide.

Mr. Velde: Used their aliases for the purpose of signing membership cards and paying dues?

Mr. Rumsey: Paying dues, yes. Otherwise, within the local unions, they functioned as Watkins, so on, you see.

Mr. Velde: Proceed, Mr. Counsel. In other words, it was just a coverup.

Mr. Kunzig: In the case of Watkins, did you collect dues from him under the name of Watkins or Sam Brown?

Mr. Rumsey: Sam Brown.

Mr. Kunzig: You mentioned Donald Spencer, Watkins, Gustafson; are there any other people from whom you collected dues?

Mr. Rumsey: Quite a few. There are a lot of them around now. Henry Mack.

Mr. Kunzig: What was he at the time?

Mr. Rumsey: Well, he was an organizer, came from the Abraham Lincoln Brigade. An organizer over in Spain.

Mr. Kunzig: Was he in the Moline area?

Mr. Rumsey: Yes, he was out there at the time I collected dues from him.

Mr. Kunzig: He is not there now?

Mr. Rumsey: No, he is not there.

Mr. Scherer: I think it should be noted, Mr. Counsel, that the Abraham Lincoln Brigade has been designated as a Communist-front organization on numerous occasions.

Mr. Kunzig: Yes. Are there any other names, Mr. Rumsey?

Mr. Rumsey: I have a list of them.

Mr. Kunzig: Is this a list which you made of people whom you knew to be members of the Communist Party?

Mr. Rumsey: This is a few of them I have had contact with, and know to be definitely Communists.

Mr. Kunzig: You definitely know these people to be Communists. You are only going to mention names now of people whom you knew to be Communists?

Mr. Rumsey: Whom I have had contact with through the Communists and functioned with them as a Communist.

Mr. Kunzig: As a Communist.

Mr. Rumsey: That is right.

Mr. Kunzig: Use your notes and give us the names.

Mr. Rumsey: I would like to have it stated, too, I am making no mistakes about these. These are known, paid, and so forth, card-carrying Communists.

Mr. Scherer: They were at the time?

4248 Mr. Rumsey: I am glad you spoke of that. They were at the time I was in.

Mr. Scherer: They may not be today.

Mr. Rumsey: They may not be today.

Leland Baker, Peoria Caterpillar plant. Warren Bettersen, district organizer for the Iowa, Illinois, Nebraska, that is portions of Illinois. John T. Watkins, alias Sam Brown, district organizer for the FE-CIO at that time. Morris Childs, from the central Communist committee.

Mr. Kunzig: What connection did you have with Morris Childs?

Mr. Rumsey: Well, we would—there would be conventions held here in Chicago, maybe in Cleveland, various places, to which Morris Childs would bring the happenings of the top Communist committee to us.

Mr. Kunzig: He would bring the word down as to what you were to do?

Mr. Rumsey: What we were to do and how we were to function.

Mr. Kunzig: All right. Who else?

Mr. Rumsey: Ernie De Maio.

Mr. Kunzig: How do you spell that De Maio?

Mr. Rumsey: De M-a-i-o.

Mr. Kunzig: Ernie De Maio. Who was he?

Mr. Rumsey: District organizer here for the Chicago district, United Electrical Workers. Gerald Fielde, or Jerry Fielde, from the FE, United Farm Equipment Metal Workers. Harold Fisher. F-i-s-h-e-r.

Mr. Kunzig: Who is Harold Fisher?

Mr. Rumsey: District organizer for the Moline—Quad-City area, in the FE, United Farm Equipment Metal Workers.

Gus Gustafson.

Mr. Kunzig: Mentioned a while ago.

Mr. Rumsey: An employee of the John Deere Plow Works, secretary-treasurer of the local.

Catherine Hall, Mrs. John T. Watkins now. She was a district organizer at that time for the United Farm Equipment Metal Workers, CIO, in the district of Rock Island, Moline, and Davenport.

Mr. Kunzig: In addition to knowing that John Watkins was a member of the Communist Party, you also knew his wife, Catherine Hall, was a member?

Mr. Rumsey: That is right, collected dues from her.

Mr. Kunzig: Who else?

Mr. Rumsey: Dorothy Hillyerd.

Mr. Kunzig: Spell that.

Mr. Rumsey: H-i-l-l-y-e-r-d.

Mr. Kunzig: Who was Dorothy Hillyerd?

Mr. Rumsey: She was an employee in one of the shops in the Quad-Cities, just an employee, card carrier.

Charles Hobbe, district organizer for the Iowa branch of the Farm Equipment and Metal Workers at Cedar Rapids, Iowa.

Charles Killinger, United Farm Equipment and Metal Workers, in the labor district here in Chicago, on the south side.

Mr. Kunzig: Is that K-i-l-l-i-n-g-e-r?

Mr. Rumsey: That is right.

Mr. Kunzig: Charles Killinger?

Mr. Rumsey: Yes.

4249 Mr. Kunzig: Who else?

Mr. Rumsey: Theo Kruse from Moline, a beautician operator.

Mr. Kunzig: K-r-u——

Mr. Rumsey: —s-e.

Mr. Kunzig: Kruse.

Mr. Rumsey: Charles Lawson, district vice-president at that time of the United Farm Equipment and Metal Workers, lake district, on the south side.

Mr. Kunzig: You knew him also to be a card-carrying Communist?

Mr. Rumsey: That is right. Olaf Lidel, a watchmaker in Rock Island.

Mr. Kunzig: Spell that.

Mr. Rumsey: L-i-d-e-l.

Mr. Kunzig: And the first name is O-l-a-f?

Mr. Rumsey: Olaf.

Mr. Kunzig: Who was Mr. Lidel?

Mr. Rumsey: He was a watchmaker, repaired watches in Rock Island.

Mr. Kunzig: Rock Island?

Mr. Rumsey: Rock Island, Ill.

Mr. Kunzig: All right.

Mr. Rumsey: Sarah and Murray Levine. They were just citizens, but Communists.

Mr. Kunzig: Where?

Mr. Rumsey: In Rock Island.

Mr. Kunzig: In Rock Island. And who else now?

Mr. Rumsey: Leuth.

Mr. Kunzig: Spell that.

Mr. Rumsey: L-e-u-t-h.

Mr. Kunzig: Harriet Leuth?

Mr. Rumsey: Yes.

Mr. Kunzig: Who was Harriet Leuth?

Mr. Rumsey: Just a factory worker, no official position.

And Henry Mack.

Mr. Kunzig: Henry Mack?

Mr. Rumsey: That is the one from the Abraham Lincoln Brigade.

Mr. Kunzig: You mentioned him awhile ago?

Mr. Rumsey: Yes. He was an organizer for the Rock Island district for the United Farm Equipment and Metal Workers, CIO, at that time.

Herb Marsh.

Mr. Kunzig: M-a-r-s-h?

Mr. Rumsey: That is right.

Mr. Kunzig: Who was Herb Marsh?

Mr. Rumsey: District president for the Packinghouse Workers.

Mr. Kunzig: District president for the Packinghouse Workers?

Mr. Rumsey: That is right.

Mr. Kunzig: And you knew him as you knew all of these others to be members of the Communist Party?

Mr. Rumsey: Yes.

Mr. Kunzig: And who else?

Mr. Rumsey: Ajay Martin.

Mr. Kunzig: Spell that.

Mr. Rumsey: A-j-a-y M-a-r-t-i-n.

4250 Mr. Kunzig: His first name was Ajay.

Mr. Rumsey: Ajay Martin, Peoria Caterpillar Works.

Mr. Kunzig: From the Peoria Caterpillar Works. What was his position down there?

Mr. Rumsey: The last official position he had was vice president, international vice president of the United Farm Equipment and Metal Workers.

Mr. Kunzig: And you knew him as a Communist?

Mr. Rumsey: Yes, sir.

Mr. Kunzig: Who else was there?

Mr. Rumsey: Harold Metcalf. He is a retired machine worker from Davenport, Iowa.

Mr. Kunzig: Go on, please.

Mr. Rumsey: John Milkevitch.

Mr. Kunzig: M-i-l-k-e-v-i-t-c-h?

Mr. Rumsey: That is right, from the International Harvester Works. He was a committee member of the union, local 104, East Moline, International Harvester plant.

Mr. Kunzig: Are there any others that you knew?

Mr. Rumsey: Grant Oakes.

Mr. Kunzig: G-r-a-n-t O-a-k-e-s?

Mr. Rumsey: Yes, that is right.

Mr. Kunzig: Who was Grant Oakes?

Mr. Rumsey: He was president of the International Farm Equipment and Metal Workers.

John Weber or Joe Weber, or Joe Ruick, either one.

Mr. Kunzig: That was an alias?

Mr. Rumsey: I don't know which was the alias.

Mr. Kunzig: You don't know which was the real name on the alias?

Mr. Rumsey: I think Ruick was the real name, or that was. I think that is what he came to this country with. This Weber was hooked on later on.

Anyway, it was Ruick or Weber, either one.

Mr. Kunzig: Who was Mr. Ruick or Mr. Weber?

Mr. Rumsey: He was district organizer for the national office, out of the national office.

Mr. Kunzig: Of what?

Mr. Rumsey: Of the Farm Equipment and Metal Workers. He was up for deportation. I don't know what came out of it.

Then there was a Frank Rogers. He was an organizer for the Farm Equipment and Metal Workers. He worked out of the lake district here in the south side. At one time, he was at Peoria.

Mr. Kunzig: Any other names now?

Mr. Rumsey: Arthurs Saunders. S-a-u-n-d-e-r-s.

Mr. Kunzig: Is that the way to spell it?

Mr. Rumsey: Yes.

Mr. Kunzig: Arthur Saunders.

Mr. Rumsey: Steelworkers.

Mr. Kunzig: In what connection did you know Arthur Saunders?

Mr. Rumsey: A Communist, in the confines of communism, attending meetings, so forth.

Mr. Kunzig: What was his work other than communism?

4251 Mr. Rumsey: His position in the steelworkers was that of an organizer.

William Sentner:

Mr. Kunzig: Spell Sentner.

Mr. Rumsey: S-e-n-t-n-e-r.

Mr. Kunzig: William Sentner. Who was William Sentner?

Mr. Rumsey: He was the district vice president for the St. Louis district. It is quite a district, part of Illinois, Missouri, Iowa,—

Mr. Kunzig: District of what?

Mr. Rumsey: Of the United Electrical, Radio and Machine Workers, UE.

Mr. Kunzig: I see. Continue.

Mr. Rumsey: Seymour Siporin.

Mr. Kunzig: S-e-y-m-o-u-r?

Mr. Rumsey: Yes, sir.

Mr. Kunzig: Spell the last name.

Mr. Rumsey: S-i-p-o-r-i-n. District organizer for the United Farm Equipment and Metal Workers Union.

Mr. Kunzig: Who else?

Mr. Rumsey: Donald O. Spencer.

Mr. Kunzig: That is the Spencer who has cooperated with the committee?

Mr. Rumsey: Yes. He has no official position with any union as of this time.

Joan Steel, district organizer for the Iowa, Nebraska, and Illinois, part of Illinois district of the Communist Party.

Joe Stern.

Mr. Kunzig: S-t-e-r-n?

Mr. Rumsey: Yes.

Mr. Kunzig: Who was Joe Stern?

Mr. Rumsey: Well, the first I got to know of him, he was on the committee in the East some place.

Mr. Kunzig: What committee?

Mr. Rumsey: Central committee, a committee, Quad-Cities Industrial Committee.

Then there was George and Ray Teeple.

Mr. Kunzig: Spell that, please.

Mr. Rumsey: T-e-e-p-l-e.

Mr. Kunzig: George and Ray Teeple. Are they two people or one?

Mr. Rumsey: Two people, brothers, two. They would have to be.

Mr. Kunzig: Now, the two Teeples; what was their position other than the Communist work that you knew?

Mr. Rumsey: Well, Ray Teeple was chairman of the local union in Bettendorf, Iowa, which is included in the Quad Cities, and he was chairman of that local for the Bettendorf union at the time. George Teeple; he was a foundry worker in Moline, but they were both within the Communist Party.

Mr. Kunzig: Any others?

Mr. Rumsey: Donald T-i-e-g-l-a-n.

Mr. Kunzig: Who was Donald Tieglan?

Mr. Rumsey: He is from 104, International Harvester local, East Moline, and secretary-treasurer of their local at one time. Incidentally, he ran as representative, and served as a representative for 2 years, in the House of Representatives.

4252 Mr. Kunzig: Here—

Mr. Rumsey: Here in Illinois.

Mr. Kunzig: Here in Illinois?

Mr. Rumsey: That is right.

Mr. Kunzig: And this man, Donald Tieglan, whom you knew, as you say, just served as a representative in Illinois, you knew to be a member of the Communist Party?

Mr. Rumsey: That is right.

Mr. Kunzig: Any others?

Mr. Rumsey: Rex Wielock, United Electric Workers' organizer.

Mr. Kunzig: Continue.

Mr. Rumsey: John and Marie Wilson, man and wife, no official position, only Communists.

Mr. Kunzig: Where did they live?

Mr. Rumsey: Davenport, Iowa.

Mr. Kunzig: Is that the full number of names?

Mr. Rumsey: That is all that I have; yes.

Mr. Kunzig: So that the record is clear and we understand it completely, all of the names you have mentioned in the last 10 or 15 minutes are people whom you knew to be members of the Communist Party?

Mr. Rumsey: That is right; that I have either collected dues from or sat in important Communist meetings with.

. . . . . .

4255 Mr. Velde: Of course, we have had a great many hearings all throughout the country dealing with the subject of communism and the labor union movement. We have had a lot of our hearings printed, pamphlets, so that members in the Communist-dominated unions should know that we have the information and should be willing to read the information that is furnished free of charge in most instances by the Federal Government. As far as the elections themselves are concerned, elections for representation, are all union members pretty well notified of the pending election?

. . . . . .

DEFTS. EXHIBIT No. 6(M) (ident.)

(Filed July 18, 1955)

. . . . . .

998 Mr. Polumbaum: I believe that this committee—if this committee has any evidence of illegal activities or illegal conspiracy, it is certainly within its right to bring this evidence before the proper authorities and have any persons so charged brought into court.

Mr. Clardy: That is what we are doing. We are bringing it to the attention of the American people—the real jury that will convict those of you that may be engaged in that conspiracy.

. . . . . .

DEFTS. EXHIBIT No. 6(N) (ident.)

Filed July 18, 1955

COMMUNIST METHODS OF INFILTRATION (EDUCATION—PART 4)

HEARINGS BEFORE THE COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVES

Eighty-Third Congress
First Session

. . . . . .

1106 Mr. Velde: I was in the Federal Bureau of Investigation for some time and I am aware of the fact that while every attempt is made to discover subversive activities by the Federal Bureau of Investigation, like all other intelligence agencies they are not infallible, and I can assure you very definitely that the Federal Bureau of Investigation does not have the complete roster of members of the Communist Party and does not have a complete list of all of the persons in this country who are engaged in subversive activities. That fact has been brought out. I think Mr. J. Edgar Hoover and the Federal Bureau of Investigation are fine people and it is a great organization, but they are not infallible.

So as a committee of Congress, elected by the people, we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purpose of remedial legislation but to inform the people who elected us about subversive activities. Frankly, I think that at the time you became dissatisfied and withdrew from the Communist Party, as an American citizen it imposed a duty upon you to apply to some agency of government which was interested in subversive activities. You say you knew they were investigating you. I mean that in all respect, but I just want to put that in the record.

. . . . . .

1141 Mr. Doyle: * * * We are assigned by the United States Congress to investigate any individual whom

the record shows is in the judgment of the committee and the evidence, subversive.

. . . . . .

DEFTS. EXHIBIT No. 7 (ident.)

Filed July 18, 1955. Harry H. Hull, Clerk

Schedule B

Excerpts from the following documents are included in Schedule B:

1. Special Report on Subversive Activities Aimed at Destroying our Representative Form of Government, 77th Congress, 2nd Session, House Report No. 2748 (1942).

2. Report of the Committee on Un-American Activities, 79th Congress, 2nd Session, House Report No. 2742 (1946).

3. Hearings Before the Committee on Un-American Activities, House of Representatives, 82nd Congress, 2nd Session, Communist Activities in the Chicago Area—Part 1 (1952).

4. Hearing Before the Committee on Un-American Activities, House of Representatives, 83rd Congress, 1st Session, Communist Methods of Infiltration (Education—Part 2) (1953).

5. Report of the Special Committee, House of Representatives, to Investigate Un-American Activities, H. Rep. No. 2, 76th Congress, 1st Session, 13 (1939).

6. Report of the Special Committee to Investigate Un-American Activities, House of Representatives, H. Rep. No. 1476, 76th Congress, 3rd Session, 1, 3, 24 (1940).

7. Report of the Special Committee to Investigate Un-American Activities, House of Representatives, H. Rep. No. 1, 77th Congress, 1st Session, 24 (1941).

SPECIAL REPORT ON SUBVERSIVE ACTIVITIES AIMED AT DESTROYING OUR REPRESENTATIVE FORM OF GOVERNMENT.—77TH CONG. 2nd. Sess., 1942.

"This committee has defined its special function, in accordance with the terms of the mandate given by the House,

as the discovery and exposures of those enemy groups which fight with nonphysical weapons as a fifth column on our home front." (page 2)

"On October 25, 1939, the Committee made public the names, positions, and salaries of some 563 Government employees located in Washington, D. C. who were members of the American League for Peace and Democracy. In three reports which this committee has made to the House, it has found the American League for Peace and Democracy to be a communist front organization. It will be recalled that Earl Browder was Vice President of that organization. Furthermore, the Attorney General, Mr. Francis Biddle, has branded the American League a subversive organization, in language as strong as any used by this committee in its character. In making public this list, the committee issued an accompanying statement which made clear that it did not consider all of the people on that list or any one of them in particular to be communists, but in view of the fact that these Government employees were members of a communist front organization and continued their membership long after the organization was exposed as being communistic, the committee felt that the Congress and the people were entitled to know who they were. This was an authentic membership list obtained from the Headquarters of the American League for Peace and Democracy by due process of subpena which was served upon the Secretary of the organization. (pages 4 and 5).

REPORT OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES, 79th Congress, 2nd Session, 1946 H. Rept. 2742.

"The committee, during the past 2 years, has assembled an exhaustive file on every known subversive individual and organization at work in the United States today. The committee's system of cross-indexing, filing, and master filing is considered one of the outstanding systems of this type in the United States. The files of the committee are used daily as sources of information by practically every investigative division of the Federal Government." (Page 16)

COMMUNIST ACTIVITIES IN THE CHICAGO AREA—PART 1

(United Electrical, Radio and Machine Workers of America; and Farm Equipment Workers Council, UERMWA)

HEARINGS BEFORE THE COMMITTEE ON UN-AMERICAN ACTIVITIES, HOUSE OF REPRESENTATIVES

Eighty-Second Congress
Second Session

* * * * * * * *

3737 TESTIMONY OF DONALD O. SPENCER

Mr. Tavenner: When and where were you born, Mr. Spencer?

Mr. Spencer: Standwood, Iowa, February 6, 1903.

Mr. Tavenner: What has been your educational training?

Mr. Spencer: I graduated from high school in 1920, and that is about all of the schooling I had.

Mr. Tavenner: What has been your record of employment in the past, say, since 1935?

Mr. Spencer: I started at John Deere Plow Works in 1928.

Mr. Tavenner: And you are still employed there?

Mr. Spencer: Yes, sir.

Mr. Tavenner: During that period of time, have you been affiliated with the Farm Equipment Workers?

Mr. Spencer: I was until I was expelled from the union.

3738 Mr. Tavenner: When were you expelled?

Mr. Spencer: I was expelled in April, sometime during April of 1949. I was a member from February 3, 1943, until that time, that is when we organized the plant, under FE-CIO.

Mr. Velde: What was that date again?

Mr. Spencer: February 3, 1943, that is when we received, you know, our bargaining rights, under the FE-CIO.

Mr. Tavenner: Now, is that the time of your expulsion from the union, was it in 1949 that you were expelled from the union?

Mr. Spencer: In 1949 I was expelled from the union, in April.

Mr. Tavenner: Is that about the time that the FE and the UE left the CIO-or were expelled from the CIO?

Mr. Spencer: No; that is the spring before that happened, they were expelled that November of the same year.

Mr. Tavenner: What was the reason for your expulsion?

Mr. Spencer: I worked with the UAW because I felt as a good many others did that the FE was going to get expelled from the CIO, and I wanted to remain within the CIO, and I also wanted to see my plant going up with other plants of the Deere chain with the UAW, because they represent most of the Deere workers, and I thought we would have a solider and better union.

Mr. Tavenner: During the period that you were a member of the Farm Equipment Workers, did you become a member of the Communnist Party?

Mr. Spencer: Yes, sir.

Mr. Tavenner: When did you become a member?

Mr. Spencer: In 1943, in October.

Mr. Tavenner: How long did you remain a member of the Communist Party?

Mr. Spencer: Well, my dues were paid until the 1st of January 1946.

Mr. Tavenner: Who recruited you into the Communist Party?

Mr. Spencer: Walter Rumsey encouraged me into the party, with the endorsement and full knowledge of John Watkins.

Mr. Tavenner: Is that John Watkins?

Mr. Spencer: Yes, sir. He was district vice president of the FE at the time.

Mr. Tavenner: What position did Mr. Rumsey hold in the FE at that time?

Mr. Spencer: He was chairman of my local, 150, FE-CIO.

Mr. Tavenner: When you were recruited into the party, were you assigned to a group or cell of the Communist Party?

Mr. Spencer: No; not at that time. There was just one group in the district at that time to my knowledge, and that was the Quad City group of the Communist Party.

Mr. Tavenner: Did you hold any position within your Communist Party group?

Mr. Spencer: Yes, sir.

Mr. Tavenner: What was that?

Mr. Spencer: I was chairman of the industrial group, but not the first year, that was later, when they organized into industrial groups.

Mr. Tavenner: What were your duties as chairman of the industrial group?

3739 Mr. Spencer: To encourage membership within the shops, and to organize them along, so they would cooperate one group with the other.

Mr. Tavenner: Were groups organized in various shops?

Mr. Spencer: There was an attempt made to organize them, but not too successfully.

Mr. Tavenner: Explain to us just what the Communist Party set-up was within FE, as far as you are able to describe it.

Mr. Spencer: Well, the group there was an industrial group that we tried to organize, we had a few members in some of the shops and we tried to expand on that. The industrial group was to represent the shop workers, the industrial workers within thhe various shops in the Quad Cities.

Mr. Tavenner: How many groups or branches of the Communist Party were formed to your knowledge within that area?

Mr. Spencer: Well, within the industrial group, they just remained one large group because there were a few in one shop and a few in another, and others.

Mr. Tavenner: But all members of one branch or group of the Party?

Mr. Spencer: Yes; industrial group.

Mr. Tavenner: Did that group have a name?

Mr. Spencer: Nothing other than the industrial group of the Communist Party, Quad City area.

Mr. Tavenner: Were the members confined to any particular local?

Mr. Spencer: Well, the majority of them were within my own local.

Mr. Tavenner: What was your local?

Mr. Spencer: Local 150, FE-CIO, at the time.

Mr. Tavenner: In the performance of your duties as chairman of the Industrial Group, did you do any recruiting or attempt to do any recruiting of members?

Mr. Spencer: Well, no, I didn't; I tried to hold what we had and get together with them and have discussions, because I was pretty busy myself because I was a union officer at the time, you see.

Mr. Tavenner: Did you recruit any new members yourself?

Mr. Spencer: Yes, I did.

Mr. Tavenner: Who were they?

Mr. Spencer: Hazel Jones was one, and Bill Gardner; they both worked within the shop.

Mr. Tavenner: Are you acquainted with Harriet Leuth?

Mr. Spencer: She was a member of our executive board. That is L-e-u-t-h. She was recording secretary of local 150.

Mr. Tavenner: What positions in the union were held by members of your branch of the Communist Party?

Mr. Spencer: Well, I was vice chairman of the local, and chairman of the grievance committee, and Walter Rumsey was chairman of the local, and Gus Gustofson was secretary-treasurer of the local, and Hazel Jones was the steward in the local, the steward of the tractor drivers, and I believe those are the only executive positions within the local that were held by members of the Communist Party.

Mr. Tavenner: Did that virtually assure Communist control of the activities of the union?

3740 Mr. Spencer: A good share of it. I wouldn't say absolute control, but quite a bit of it.

Mr. Tavenner: Are you acquainted with a person by the name of Ray Teeple?

Mr. Spencer: Yes, sir.

Mr. Tavenner: What position did he hold in the Communist Party, if any?

Mr. Spencer: He was secretary at the time I joined, and he is the one that signed me up at his house, in Bettendorf, Iowa.

Mr. Tavenner: How was he employed at that time?

Mr. Spencer: He was working at the tank arsenal in

Bettendorf, and he was chairman of the local tank-arsenal unit in Bettendorf.

Mr. Tavenner: You said "chairman," I believe.

Mr. Spencer: Maybe I should have said "president" of the local.

Mr. Tavenner: Were you acquainted with Joe Stern?

Mr. Spencer: Yes, I was.

Mr. Tavenner: What position did he hold in the union, if any.

Mr. Spencer: He did not hold any officer's job; he was an active member for a short while of the Farmall local, previous to their strike in 1946.

Mr. Tavenner: Did you serve on any committee with Ray Teeple and Joe Stern?

Mr. Spencer: Ray Teeple and Joe Stern and myself were the—I think you would call it—the top committee of the Quad City area.

Mr. Tavenner: Committee of what; in what organization?

Mr. Spencer: The Communist Party.

Mr. Tavenner: Therefore Joe Stern was a fellow Communist Party member?

Mr. Spencer: He was.

Mr. Tavenner: Were you acquainted with Olaf Leddel?

Mr. Spencer: Yes, sir; I was. And he was a member of the party.

Mr. Tavenner: How was he employed, do you know?

Mr. Spencer: He was a watchmaker and a watch repairer.

Mr. Tavenner: He was not affiliated with your union?

Mr. Spencer: No; he had a shop in his own home, where he repaired watches.

Mr. Tavenner: Were you acquainted with Theo Kruse?

Mr. Spencer: Yes, I have known her, and I knew her at that time.

Mr. Tavenner: Was she affiliated with the Communist Party?

Mr. Spencer: She was in one of the city branches, the Rock Island and Moline city group, they called it.

Mr. Tavenner: Now, you have mentioned, I believe, that you were recruited into the party by Ray Teeple?

Mr. Spencer: I was signed up in Ray Teeple's home, and I was recruited by Walter Rumsey, who was president of our local at the time.

Mr. Tavenner: In what connection did you mention John Wilson?

Mr. Spencer: I haven't mentioned John Wilson yet.

Mr. Tavenner: I thought in your testimony at the time you were recruited you mentioned a person by the name of Wilson.

Mr. Spencer: John Watkins; he approved my recruitment before I was admitted.

3741 Mr. Tavenner: Did you ever attend meetings in the home of John Watkins; Communist Party meetings?

Mr. Spencer: No.

Mr. Tavenner: Were you acquainted with Catherine Hall, the wife of John Watkins?

Mr. Spencer: Yes; she wasn't the wife of John Watkins at that time, though. She was working in the office, the district office of FE-CIO, in Rock Island, at the time.

Mr. Tavenner: Was she a member of the Communist Party?

Mr. Spencer: Well, she attended the meetings, and I never saw her card, but she would have had to have been or she couldn't attend the meetings.

Mr. Tavenner: Were you acquainted with John Wilson, and I mentioned the name a few moments ago.

Mr. Spencer: Yes.

Mr. Tavenner: How was he employed: do you know?

Mr. Spencer: The Red Jacket Pump Co. in Davenport at that time in 1944.

Mr. Tavenner: Was he a member of your union?

Mr. Spencer: No; I think the A. F. of L. represented them, and I am not sure, but I believe they represented the Red Jacket Pump Co.

Mr. Tavenner: Was he known to you as a member of the Communist Party?

Mr. Spencer: Yes.

Mr. Tavenner: Was he a member of your particular branch or cell?

Mr. Spencer: No; he was a member of the Davenport branch, the Iowa side of the river.

Mr. Tavenner: Were you acquainted with his wife, Mabel Wilson?

Mr. Spencer: Yes, I was.

Mr. Tavenner: What position did she hold?

Mr. Spencer: She was the secretary-treasurer, I believe, because she collected dues for a while, in 1944.

Mr. Tavenner: Dues in what organization?

Mr. Spencer: The Communist Party.

Mr. Tavenner: For what area did she cover in the collection of dues?

Mr. Spencer: At that time, the whole Quad City area, because that was the only organization within the Quad City area at that time. It was the Quad City branch or the Quad City group of the Iowa branch. You see, the tri-cities were taken in under the Iowa group.

Mr. Tavenner: Were you acquainted with Murray Levine?

Mr. Spencer: Yes, I was.

Mr. Tavenner: How was he employed?

Mr. Spencer: I am not sure, but I believe he was employed at the Birtman Electric.

Mr. Tavenner: Was he known to you as a member of the Communist Party?

Mr. Spencer: Yes.

Mr. Tavenner: What is the basis of your statement that he was a member?

Mr. Spencer: Because he attended all of the meetings, and he wouldn't have been allowed to attend unless he was a paid-up member.

3742 Mr. Tavenner: Were you acquainted with his wife, Sarah?

Mr. Spencer: Yes.

Mr. Tavenner: Was she a member of the party?

Mr. Spencer: She attended meetings, too, as a paid-up member.

Mr. Tavenner: Are you acquainted with Rex Wheelock?

Mr. Spencer: Yes.

Mr. Tavenner: How was he employed?

Mr. Spencer: He was the district representative of the

UE in the Quad City district, representing the Minneapolis Moline Power Implement Co., an electrical concern there in Moline, and Eagle Signal Co.

Mr. Tavenner: Was he a member of the Communist Party?

Mr. Spencer: Yes, he was.

Mr. Tavenner: Were you acquainted with Dorothy Hillyer?

Mr. Spencer: Yes, I was.

Mr. Tavenner: Was she a member of the Communist Party?

Mr. Spencer: She was.

Mr. Tavenner: John Milkovitch. What is the correct spelling of the name?

Mr. Spencer: I think it is Milkovich. I think it is M-i-l, I am not sure, k-o-v-i-t-c-h, I believe.

Mr. Tavenner: How was he employed?

Mr. Spencer: I believe he worked for the East Moline Harvester, the Harvester group of the IHC, with a factory in East Moline.

Mr. Tavenner: Was he known to you to be a member of the Communist Party?

Mr. Spencer: Yes, he was.

Mr. Tavenner: Donald Tiegland.

Mr. Spencer: Yes; he has attended meetings of the Communist Party.

Mr. Tavenner: Can you identify him further as to his occupation, or any position that he held?

Mr. Spencer: He worked in the East Moline works of Harvester and I believe he still works there.

Mr. Tavenner: Did he at any time during his party membership hold any political position?

3743 Mr. Spencer: He was State representative and I don't know just what term it was, it was during the war there, and he was elected to one term in the house of representatives at Springfield.

Mr. Tavenner: Harold Fisher.

Mr. Spencer: I knew him, yes.

Mr. Tavenner: Was he a member of the Communist Party to your knowledge?

Mr. Spencer: He was, he attended the meetings and I have never seen his card, or anything of that kind, but he attended closed meetings of the Communist Party.

Mr. Tavenner: Did you attend a meeting at the Sherman Hotel?

Mr. Spencer: Yes, I did.

Mr. Tavenner: In Chicago?

Mr. Spencer: Yes, I did.

Mr. Tavenner: What was the nature of the meeting?

Mr. Spencer: Well, it was a meeting to sort of iron out the difficulties between various labor unions and it was a sort of a let-your-hair-down and criticize the methods and sort of picking out the best arrangements in conducting strikes and bargaining.

Mr. Tavenner: What was the date of that meeting?

* * * * * * * *

3744 Mr. Tavenner: Do you know whether he was a member of the Communist Party?

Mr. Spencer: I do not know positively, and I never saw his membership card, but I feel certain he would not have been at that meeting if he had not been, because they were very careful who attended.

Mr. Moulder: How did they identify themselves? You say they were very careful, and how did they check on them?

Mr. Spencer: You didn't get in unless somebody that knew you very well, and recommended you to the group.

Mr. Moulder: You mean at the door?

Mr. Spencer: Yes.

Mr. Moulder: Did they have a doorman?

3745 Mr. Spencer: Yes, there was a man at the door, and also they were told that they could attend, and I was told about 5 minutes before the meeting.

Mr. Moulder: Did you have to identify yourself with a Communist card of some method in order to be admitted?

Mr. Spencer: No; they just said he is a good fellow, we can let him in on this meeting.

Mr. Tavenner: Will you name other persons who were present and took part in that meeting?

Mr. Spencer: Grant Oakes was present and Jerry Fielde, and John Watkins.

* * * * * * * *

Mr. Velde: The same is true of Grant Oakes? You saw him?

Mr. Spencer: Yes; I saw him. And Walter Rumsey and Morrie Childs.

Mr. Velde: Is that Morris Childs?

Mr. Spencer: It might be; they call him Morrie. They called him Morrie at the meeting.

Mr. Velde: It is a matter of public knowledge, Mr. Chairman, that Morris Childs was organizational director for the Communist Party of the State of Illinois. Did he belong to any union that was represented at that meeting?

Mr. Spencer: I don't know as he did, and I didn't know him as a union member, I will put it that way.

* * * * * * * *

Mr. Tavenner: Let me see if you can recall the names of any others.

Mr. Spencer: Well, I was told that a man by the name of Sorensen was there, and Ernie DeMaio.

Mr. Tavenner: Ernest DeMaio?

Mr. Spencer: They were identified as such to me, and I don't know them, I don't know the men personally.

Mr. Tavenner: Do you recall whether John Watkins was there?

Mr. Spencer: Yes; I named him as being there.

Mr. Tavenner: You did name him?

Mr. Spencer: Yes.

Mr. Tavenner: Those are all that you can recall?

Mr. Spencer: Right at the present time, that is all that I can recall.

* * * * * * * *

3746 Mr. Tavenner: Well, Ernest DeMaio was an organizer within the UE.

Mr. Spencer: I believe he was at that time.

* * * * * * * *

Mr. Spencer: Yes, he was, I was told, he was identified to me as being present and I don't know the man.

Mr. Tavenner: Did you attend any other meetings at the Sherman Hotel?

Mr. Spencer: Yes, I was called into Chicago to attend a meeting at the Sherman Hotel in 1944, in the fall, and Walter Rumsey was called too, but he didn't make the trip, and I was told to be at the Sherman Hotel.

* * * * * * * *

3747 Mr. Velde: What is your opinion of how he was notified?

Mr. Spencer: I think John Watkins approved of us being there or we wouldn't have been there.

* * * * * * *

HEARING BEFORE THE COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVE—83rd CONGRESS 1st SESS. (1953)

Communist Methods of Infiltration (Education—Part 2)

Mr. Velde * * *

"In relation to the appearance of Abraham Glasser, professor in the Rutgers University School of Law, the committee wishes to acknowledge and express its appreciation to Rutgers University and its officials for the excellent cooperation it has extended the committee. The committee wishes to state that it hopes that the excellent spirit of cooperation exhibited by this outstanding university might serve as a model to other colleges and other universities in the United States. There has been no implication nor misunderstanding that the committee, in hearing Mr. Glasser, has in any manner instituted or conducted any investigation of Rutgers University. (p. 221)

H. REP. No. 2, 76th CONG., 1st SESS., 13 (1939)

"While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate communism, fascism, and nazism, it does have the right to focus the spotlight of publicity upon their activities."

H. REP. No. 1476, 76th CONG., 3d SESS., 1, 3, 24 (1940)

". . . Investigation to inform the American people . . . is the real purpose of the House Committee . . . The committee conceives its principal task to have been the revelation of the attempts now being made by extreme groups in this country to deceive the great mass of earnest and devoted American citizens . . . The purpose of this committee is the task of protecting our constitutional democracy by . . . pitiless publicity . . ."

H. REP. No. 1, 77TH CONG., 1ST SESS., 24 (1941)

"This committee is the only agency of Government that has the power of exposure . . . There are many phases of un-American activities that cannot be reached by legislation or administrative action."

DEFTS. EXHIBIT No. 8 (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

83 CONG. REC. 7570 (1938), May 26, 1938

Mr. Dies: "I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon we have in our possession."

92 CONG. REC. 3767 (1946), April 16, 1946

Mr. Mundt: "The country might as well be told first as last that our committee is in this fight to expose un-American activities to the finish. By your votes today we ask you to give evidence of your support."

CONG. REC. Vol. 91, Part 1, 79th Cong., 1st Sess. January 16, 1945 (Page 275)

Mr. Rankin: * * * I realize that the eyes of the Nation will constantly be upon every member of that committee.

I realize that the eyes of the young men who are fighting and dying on foreign soil for this great Republic of ours, for this great constitutional government, for American institutions, and for the American way of life, are on us now, and will be at all times upon every member of this committee.

I serve notice on the Un-American elements in this country now that this "grand jury" will be in session to investigate Un-American activities at all times.

CONG. REC. Vol. 92, Part 4, 79th Cong., 2nd Sess. May 17, 1946 (Page 5217).

Mr. Mundt: Our task—to which you Members of this House assigned us—is to seek out and to expose those activities which altogether legal are none the less un-American, subversive, and contrary to the American concept.

100 CONG. REC., Daily Issue, July 27, 1954 (Page 11589).

Mr. Gross: Mr. Chairman, in conclusion I submit the fol-

lowing report from the House Un-American Activities Committee:

[Information from the files of the Committee on Un-American Activities, United States House of Representatives]

May 24, 1954.

For: Honorable H. R. Gross
Subject: Herman F. Reissig

99 Cong. Rec. page 1985—March 16, 1953

Mr. Moulder • • •

"The Committee on Un-American Activities has and will continue to expose communism. It has an excellent record of public service in exposing and warning the American people of the evils of communism, and we must not permit baseless propaganda to injure the work of the committee."

99 Cong. Rec. page 2019—March 17, 1953

Mr. Jackson • • •

"The work of the House Committee on Un-American Activities is one designed to give the American people a continuing picture of the Communist Party at work; to expose its propaganda efforts, and to inform citizens of organizations and individuals dedicated to the destruction of the American Republic. Its investigations are confidential only to the extent necessary to determine facts. Its hearings are public, open to all informational media, and its millions of publications go directly to the people of this Nation."

99 Cong. Rec. page 2130—March 19, 1953

Mr. Velde • • •

"No. 1. Demands and requests that an investigation be made of individual Communists in the religious field. To these loyal and sincere citizens, may I say that I feel Communists should and will be ferreted out and reported to the Congress and to the people, wherever they may be found.

99 Cong. Rec., page 1371—February 24, 1953

"Mr. Jackson: Mr. Speaker, during the past 3 years, the Committee on Un-American Activities, of which I am a member, has been conducting an investigation into the extent of Communist infiltration of the Hollywood motion-picture industry. During this period, the committee has exposed several hundred persons who were employed in the motion-picture industry and who were or are members of the Communist Party."

99 Cong. Rec., page 1820—March 10, 1953

STATEMENT BY REPRESENTATIVE CLYDE DOYLE, OF CALIFORNIA, MEMBER OF ARMED SERVICES COMMITEE AND HOUSE UN-AMERICAN ACTIVITIES COMMITTEE.

However, the activities of all subversive individuals and groups must be exposed at the earliest possible date to public knowledge and spotlight.

99 Cong. Rec., page 1640—March 5, 1953

Mr. Doyle . . .

"Mr. Speaker, this is what the jury in Los Angeles and in these other cities had found these conspiratorial, totalitarian, unpatriotic, hypocritical, dangerous, ungrateful citizens to be guilty of. This is the sort of people in our Nation whom I, as a member of the Un-American Activities Committee, am primarily interested in uncovering to the light of day with their dastardly conceived plans against our American freedoms."

99 Cong. Rec., page 1360—February 24, 1953

Mr. Jackson . . .

We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy.

. . . . . .

Mr. Kearney . . .

We agree with that and we are going to find the Communists in education and elsewhere throughout this country, if this body will go along and give us the funds we need to do the job.

99 Cong. Rec., page 1359—February 24, 1953

"Mr. Kearney: * * *

Let me say this to the gentleman that this committee was constituted to seek out communism, no matter where it be, in this country, and that is what we are going to do.

* * * * * * * *

1954 Cong. Record—House—Feb. 25

2171 It is our hope that through the continued efforts of this committee we will be able to find other people who have been gnawing at the vitals of our beloved Republic to the end that they, too, may discover the effectiveness of the Smith Act.

* * * * * * * *

2172 Mr. Velde: * * *

The Congress will certainly recognize that it has given a very broad mandate to the committee to investigate subversive propaganda and activities. I can say with pride that the committee has confined itself well within the limits of this mandate. The committee has investigated individuals and not groups. It has found that these individuals have been in many varied groups and occupations within the United States. The committee has, however, made no study of the various groups which these individuals have infiltrated. There has been no investigation of education, religion, labor, or any other field, but there were individuals named by witnesses before the committee who are associated with these fields.

Even though the Communist Party in the United States has to a great extent gone underground, the House Committee on Un-American Activities, during the past year,
2173 received from witnesses the identification of more than a thousand individuals who had been members of the Communist Party, and again I should like to point out that these identifications have been made public and, with but one exception, none have come forward and denied that they have been members of the Communist Party.

* * * * * * * *

Mr. Velde: That is the distinction that I made between it and the FBI. The work of the two is in no way comparable. The chief point of differences is the fact that the FBI cannot because of the secret nature of its work make any of the information relative to subversion public unless it is in a

criminal case, whereas our Committee on Un-American Activities can make public the information that it obtains.

. . . . . .

Mr. Walter: I think the gentleman is overlooking one very important fact, namely, that the Committee on Un-American Acivities has a very large library, and it furnishes to various Government agencies information that those agencies have not obtained. That is true even of the FBI. So that a large part of the money appropriated to the Committee on Un-American Activities is expended for filing clerks who are engaged in the preparation of this very large library.

. . . . . .

2174 Mr. Doyle: . . .

This is no time to economize—not a nickel's worth —in the field of exposing subversive activities wherever they are in my judgment.

. . . . . .

2175 Furthermore, there is no time like the immediate present to help uncover and expose to the daylight or patriotic American citizens those who continue directly or indirectly as active members or participate in the Communist conspiracy to eventually overthrow the constitutional form of Government of our beloved Nation by force and violence.

. . . . . .

Schedule D

DEFTS. EXHIBIT No. 9 (ident.)

Filed July 18, 1955, Harry M. Hull, Clerk

Schedule D consists of articles from the New York TIMES of the following dates:

February 9, 1953. February 12, 1953. February 19, 1953. February 26, 1953. March 13, 1953. March 20, 1953. May 21, 1953. July 4, 1953. July 8, 1953. July 24, 1953. October 29, 1953. January 28, 1954. February 7, 1954. May 15, 1954. June 16, 1954. June 18, 1954. July

16, 1954. September 19, 1954 and Washington Daily News for November 19, 1954.

* * * * * * *

The New York Times, February 9, 1953—9:1

Philadelphia, Feb. 8 (AP)—Representative Harold H. Velde, Republican of Illinois, chairman of the House Un-American Activities Committee, said today "it's a lot better to wrongly accuse one person of being a Communist than to allow so many to get away with such Communist acts as those that have brought us to the brink of World War III."

* * * * * * *

The New York Times, February 12, 1953.

Washington, Feb. 11—The Senate group, Mr. Velde said, is searching for "organized" communistic activity in the educational system and dealing with institutions. His committee will continue to concentrate upon "individual members of the Communist party who in the past and possibly at the present time, are engaged in the field of education."

* * * * * * *

NEW YORK TIMES 1953

February 19, 1953—*Page* 10

Washington, February 18.— * * * He also announced that despite "scattered" protests by educators, college administrators generally had cooperated. He insisted the committee was not investigating education but was interested only in "tracking down individual communists in the education field."

* * * * * * *

THE NEW YORK TIMES

Thursday, February 26, 1953—*Page* 16

Washington, February 25.— * * * The House Committee, headed by Representative Harold H. Velde, Republican of Illinois, appeared to be highly conscious of criticism in it. In an opening statement, Mr. Velde insisted that the investigation was no different from preceding inquiries into

labor unions and other areas. He emphasized that the committee was not seeking to investigate institutions as such, but to ferret out communists operating within them.

* * * * * * *

THE NEW YORK TIMES

Friday, March 13, 1953—12:5

Washington, March 12—* * * In confirming the committee's action, Mr. Velde declared:

"I never did propose an investigation of the clergy nor did I propse an investigation of churches. We are interested in investigating individual Communists—whether they be found in education, in labor, in the clergy or in the legal profession."

* * * * * * *

THE NEW YORK TIMES

Friday, March 20, 1953—11:3 at 4

Mr. Velde * * * referred also to another controversial inquiry, that of communism in schools, and said he was not investigating the institutions but individual members of their faculty.

* * * * * * *

NEW YORK TIMES

Thursday, May 21, 1953—Page 20

Washington, May 20 (UP)—The House Un-American Activities Committee said to day it had decided to make no changes in its methods of ferreting out Communists wherever it found them.

* * * * * * *

THE NEW YORK TIMES

Saturday, July 4, 1953—1:6 at 4:7

* * * * * * *

Representative Velde, the committee chairman, was noncommittal on this development, which had been view in some Congressional quarters as the start of an inquiry such as Mr. Velde had said was "a possibility," although he had insisted that he meant no investigation of churches or religions.

Asked what his position was, Mr. Velde said: "We are seeking the identification of Communists, former Communists and those who now symphathize with communism or have in the past, regardless of the field in which they operate."

* * * * * * * *

THE NEW YORK TIMES

* * * * * * *

Wednesday, July 8, 1953—13:1 at 2

Mr. Clardy said the committee was not investigating or attacking the clergy or the churches or religion but was trying to expose Communists in any field, "whether in the clergy or in my own [the law] or any other group."

* * * * * * * *

THE NEW YORK TIMES

Friday, July 24, 1953—8:4

Washington, July 23—* * * "It was the sense of the committee that it is not to be inferred by anyone that this was an initiation of an investigation in the field of religion. It is in keeping with the committee's policy to investigate individual Communists or members of Communist front groups wherever they might be found."

* * * * * * * *

THE NEW YORK TIMES

Thursday, October 29, 1953—22:4

Washington, Oct. 28—* * * Representative Harold V. Velde, Republican of Illinois, who heads the committee, said the hearings scheduled for Nov. 16 and 17 would "deal exclusiwely with individual teachers in the Philadelphia area who have been identified as present or past members of the Communist party."

* * * * * * * *

THE NEW YORK TIMES

Thursday, January 28, 1954—1:4 at 16:5

* * * * * * *

The House Un-American Activities Committee moved into the picture this afternoon. Its chairman Harold H. Velde, Illinois Republican, suggested that the V.F.W.

supply names of suspected Communists to the committee as well as to the F.B.I.

"We welcome the cooperation of such patriotic organizations," he declared.

The New York Times, Sunday, February 7, 1954. 16.6.

Washington, Feb. 6 (AP)—The House Un-American Activities Committee said today it had deleted the Consumers' Union from the list of organizations it describes as subversive.

It invited other organizations to take steps similar to those it said were taken by the Consumers' Union to obtain clearance. It did not state what the steps were.

The committee devoted a part of its annual report to the Consumers' Union. The organization publishes Consumer Reports which carries articles on the quality of products for the guidance of buyers.

The committee said it cited the Consumers' Union in 1944 on the basis of information in committee records. It said the organization initiated steps "to clarify the situation."

* * * * * * *

The New York Times, May 15, 1954—9:8.

2 OUSTED FROM JOBS

Workers Force Balky Red Inquiry Witnesses to Quit

Flint, Mich., May 14 (AP)—Irate fellow-factory workers today forced two "Fifth Amendment" Congressional subcommittee witnesses to quit their jobs.

At least 500 workers at Buick's Dynaflow plant escorted Howard I. Falk to the factory gate. At the Chevrolet plant, a spontaneous sitdown strike ended with the dismissal of Marvin M. Engel.

Both Mr. Falk and Mr. Engel had refused to answer questions yesterday before a House of Representatives Un-American Activities subcommittee investigating Communist infiltration of Flint auto plants.

Under the Fifth Amendment, a witness is not compelled to give incriminating evidence against himself in a criminal case.

* * * * * * *

13:3—The New York Times, Wednesday, June 16, 1954.

Seattle, June 15— * * * During her second day in the witness chair before six Representatives, headed by the chairman, Representative Harold H. Velde, Republican of Illinois, Mrs. Hartle gave the names of more than fifty additional persons whom she declared she knew to be Communist.

* * * * * * *

11:5—The New York Times, Friday, June 18, 1954.

Seattle, June 17— * * * Mrs. Hartle has named in four days about 450 persons she declares she knew as Communists and her testimony is to continue. * * *

* * * * * * *

The New York Times, July 16, 1954—7:1.

Washington, July 15 (UP)— * * * The witnesses today, like five who appeared yesterday, refused to tell the House Committee on Un-American Activities whether they were or had been Communists. All invoked the Fifth Amendment to the Constitution, which says no one can be forced to testify against himself.

Two of the witnesses, Ray I. Pinkson, 42 years old, an electrician, and Victor Fleischer, an auto mechanic, are Russian born. A third, William Shonick, a piano tuner, was born in Poland. A threat of possible deportation for refusal to answer was raised against them.

* * * * * * *

The New York Times, Sunday, September 19, 1954. 37-1

Washington, Sept. 18— * * * The patriot-critics, the report implied, largely had been either uninformed or misinformed. Many, it held, had become innocent and effective stooges to aid the Communist conspiracy. The committee stated it hoped to enlighten them.

* * * * * * *

Since 1948, the report stated, the committee has obtained "positive" identifications of 4,151 persons who had been

Communist party members. Not more than two responded to refute the charge and changed previous testimony to a point prompting citation for perjury.

* * * * * * * *

The Washington Daily News, Friday, November 19, 1954.

JOHN Q. WILL BE INVITED TO HEARINGS

Rep. Francis E. Walter (D., Pa.), who will take charge in the new Congress of House activities against communists and their sympathizers, has a new plan for driving Reds out of important industries.

He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

By this means, he said, active communists will be exposed before their neighbors and fellow workers, "and I have every confidence that the loyal Americans who work with them will do the rest of the job."

Invite Public

Hearings of a similar nature have been held in local areas, but Rep. Walter wants to make them bigger, with the public being urged as well as invited to attend.

"We will force these people we know to be communists to appear by the power of subpena," Rep. Walter said, "and will demonstrate to their fellow workers that they are part of a foreign conspiracy."

* * * * * * * *

[fol. 175] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,797

JOHN T. WATKINS, Appellant

v.

UNITED STATES OF AMERICA, Appellee

On Rehearing En Banc

Mr. Joseph L. Rauh, Jr., with whom *Mrs. Norma Zarky* and *Messrs. Daniel H. Pollitt* and *Sidney S. Sachs* were on the brief, for appellant.

Mr. John L. Lane, Assistant United States Attorney, with whom *Messrs. Leo A. Rover*, United States Attorney, and *Lewis Carroll* and *William Hitz*, Assistant United States Attorneys, were on the brief, for appellee.

Before Edgerton, Chief Judge, and Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher and Bastian, Circuit Judges.

OPINION—Decided April 23, 1956

BASTIAN, *Circuit Judge:* On May 11, 1954, the House of Representatives voted a contempt citation against appellant and on November 22, 1954, he was indicted under 2 U.S.C. § 192 on seven counts for refusal to answer questions of a subcommittee of the Committee on Un-American Activities as to whether some twenty-nine or thirty named persons had been members of the Communist Party. Having waived his right to trial by jury, appellant was found guilty in the District Court on all counts. He was fined [fol. 176] five hundred dollars; execution of a one-year jail term was suspended and appellant was placed on probation. This appeal followed.

Appellant had been named as a member of the Communist Party for the period 1943-1946 by one Donald O. Spencer, who testified before the Committee in a hearing in Chicago

in September 1952. Appellant was identified again as a member of the Communist Party in the early 1940's by one Walter Rumsey, who appeared before the Committee in March 1954.

In his appearance before the Committee, appellant answered questions concerning himself. He admitted cooperating with the Communist Party from 1942 to 1946 and answered concerning the extent of this cooperation. He denied past or present membership in the Communist Party and reiterated these denials specifically with respect to the details of both Spencer's and Rumsey's testimony about him. In the course of this questioning, the following occurred:

[Joint Appendix, at 84, 85]

> "Mr. Kunzig: Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago. I am asking you first whether you know these people. My first question: Warner Betterson?"

Watkins said he did not know the first three persons named. Then he was asked about a Harold Fisher, whom he knew, and the following ensued [*id.* at 85, 86]:

> "Mr. Watkins: Mr. Chairman, in regard to that question, I would like to make a very brief statement I prepared in anticipation of this answer.
>
> "Mr. Velde: You may proceed.
>
> "Mr. Watkins: Thank you. I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any [fol. 177] questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party *and whom I believe still are.* I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party mem-

bers or otherwise engaged in Communist Party activity *but who to my best knowledge and belief have long since removed themselves from the Communist movement.*

"I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates.

"Mr. Kunzig: And I went to get this clear for the record. You are not in any way raising the fifth amendment?

"Mr. Watkins: I am not.

"Mr. Kunzig: But you are refusing to answer the question I have just asked you?

"Mr. Watkins: Based upon the statement just read, yes.

"Mr. Kunzig: And you, of course, have advice of counsel. He is sitting right next to you at this moment and you just conferred with him, is that correct?

"Mr. Watkins: That is correct.

"Mr. Scherer: Mr. Chairman, I ask that you direct the witness to answer.

"Mr. Velde: Yes. *This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation.*

"The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of [fol. 178] the House of Representatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel.

"Now, do you remember the question that was propounded to you?

"Mr. Watkins: I remember the question, Mr. Chairman, and I have read my answer which, among other things, states that your committee may have this power, and I stand on my statement."

[Emphasis supplied.]

Similar refusals and directions to answer followed and, like those previously described in appellant's testimony with regard to Fisher, they became the subject of the various counts of the indictment. In all, appellant refused to answer, although directed to do so, with respect to approximately thirty persons.

Appellant argues that the trial court erred in failing to grant his motion to dismiss the indictment or for acquittal. He says the Committee was exceeding its constitutional powers as a congressional investigating committee; that 2 U.S.C. § 192, read together with the Committee's authorizing resolution, was so vague and indefinite as to deprive appellant of due process of law; and that the First Amendment protected appellant against being forced to answer the particular questions asked him.

We must delimit the question before us. A majority of the court is of opinion that Congress has power to investigate the history of the Communist Party and to ask the questions Watkins refused to answer. It would be quite in order for Congress to authorize a committee to investigate the rate of growth or decline of the Communist Party, and so its numerical strength at various times, as part of an inquiry into the extent of the menace it poses and the [fol. 179] legislative means that may be appropriate for dealing with that menace. Inquiry whether thirty persons were Communists between 1942 and 1947 would be pertinent to such an investigation. The questions asked Watkins could be asked for a valid legislative purpose.

The precise question upon which the decision must rest is a narrow one. It is whether the act authorized the Committee to ask the questions asked Watkins, in the particular context in which the Committee propounded them, and whether the Committee's purpose in asking the questions was a valid legislative purpose. A majority of the court is

of opinion that the questions were pertinent to a valid legislative purpose and were authorized by the act.

According to the Legislative Reorganization Act of 1946 (60 Stat. 812, at 822, 823),[1] the Committee on Un-American Activities is one of several standing committees elected by the House of Representatives. The act sets forth in no uncertain terms the subject and scope of inquiry intrusted to this Committee. It provides [*id.* at 828]:

> "(A) Un-American activities.
>
> "(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

[fol. 180] In March 1954, the Committee conducted hearings in Chicago. At their commencement the chairman expressed the purpose of the hearings. It was to investigate, for a definite legislative purpose, communist infiltration into labor unions. The chairman stated [Joint Appendix, at 43, 44]:

> "Mr. Velde: The committee will be in order. I should like to make an opening statement regarding our work here in the city of Chicago. The Congress of the United States, realizing that there are individuals and elements in this country whose aim it is to subvert our constitutional form of government, has established the House Committee on Un-American Activities. In establishing this committee, the Congress has directed that we must investigate and hold hearings, either by the full committee or by a subcommittee, to ascertain the extent

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[1] See H.R.Res. No. 5, 83d Cong., 1st Sess. (1953) adopting provisions of the Legislative Reorganization Act as rules of the 83d Congress.

and success of subversive activities directed against the United States.

"On the basis of these investigations and hearings, the Committee on Un-American Activities reports its findings to the Congress *and makes recommendations from these investigations and hearings for new legislation. As a result of this committee's investigations and hearings, the Internal Security Act of 1950 was enacted.*

"Over the past fifteen years this committee has been in existence, both as a special and permanent committee, it has made forty-seven recommendations to the Congress to insure proper security against subversion. I am proud to be able to state that of these forty-seven recommendations, all but eight have been acted upon in one way or another. Among these recommendations which the Congress has not acted upon are those which provide that witnesses appearing before congressional committees be granted immunity from prosecution on the information they furnish.

"The committee has also recommended that evidence secured from confidential devices be admissible in cases involving the national security. The executive branch [fol. 181] *of Government has now also asked the Congress for such legislation. A study is now being made of various bills dealing with this matter.*

"The Congress has also referred to the House Committee on Un-American Activities a bill which would amend the National Security Act of 1950. This bill, if enacted into law, would provide that the Subversive Activities Control Board should, after suitable hearings and procedures, be empowered to find if certain labor organizations are in fact Communist-controlled action groups. Following this action, such labor groups would not have available the use of the National Labor Relations Board as they now have under the provisions of the Labor-Management Relations Act of 1947.

"During the first session of this 83rd Congress, the House Un-American Activities Committee has held hearings in Los Angeles and San Francisco, California; Albany and New York City, New York; Philadelphia, Pennsylvania, and Columbus, Ohio. We are here in

Chicago, Illinois, realizing that this is the center of the great mid-western area of the United States.

"It cannot be said that subversive infiltration has had a greater nor a lesser success in infiltrating this important area. The hearings today are the culmination of an investigation that has been conducted by the committee's competent staff and is a part of the committee's intention for holding hearings in various parts of the country.

"The committee has found that by conducting its investigations and holding hearings in various parts of the country, it has been able to secure a fuller and more comprehensive picture of subversive efforts throughout our nation. Every witness who has been subpoenaed to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States." [Emphasis supplied.]

Later, in April of the same year, at a continuation of the March hearings, the chairman, upon calling the com- [fol. 182] mittee to order, announced, just prior to the swearing of appellant [*id.* at 70):

"Mr. Velde: The Committee will be in order.

"Let the record show that I have appointed as a subcommittee for the purposes of this hearing Mr. Scherer, Mr. Moulder, Mr. Frazier, and myself as chairman.

"The hearing this morning is a continuation of the hearings which were held in Chicago recently by a subcommittee composed of Mr. Scherer, Mr. Moulder, and myself. At that time two witnesses were unavailable, at least the committee staff were unable to find these two witnesses to issue a subpoena for them. Subsequent to that time I believe that these witnesses have been subpoenaed, so we will proceed, Mr. Counsel, at the present time with the witnesses.".

In other words, the purpose of the Committee's hearing was to aid it [the Committee] in its study of a proposed amendment to the Internal Security Act of 1950.

That amendment was in fact enacted into law four months after appellant's refusal to testify.[2] It made unavailable to labor unions found to be communist-infiltrated procedures established in the Labor-Management Relations Act of 1947. This is a proper example of the exercise of a legitimate legislative purpose.

This court's decision in *Barsky* v. *United States*, 83 U.S. App. D.C. 127, 167 F.2d 241, cert. denied, 334 U.S. 843 (1948), as well as the decisions in *United States* v. *Josephson*, 165 F.2d 82 (2d Cir. 1947), cert. denied, 333 U.S. 838 (1948), and *Dennis* v. *United States*, 339 U.S. 162 (1950), [fol. 183] read in the light of *Sinclair* v. *United States*, 279 U.S. 263 (1929), establishes that the contempt statute, 2 U.S.C. § 192, when read together with the Committee's authorizing resolution is not so vague or indefinite as to be invalid.

With respect to appellant's claimed protection under the First Amendment, we refer to the *Barsky* case, *supra*, where this court indicated that, having power to inquire into the subject of communism and the Communist Party, Congress has the authority to identify individuals who believe in communism and those who belong to the Party, since the nature and scope of the program and activities of the Communist Party depend in large measure on the character and number of its adherents. In *Barsky* we said [167 F.2d, at 246]:

> "If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. Moreover, the accuracy of the information obtained depends in

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[2] The Communist Control Act of 1954 was passed in August 1954 (68 Stat. 775, 50 U.S.C. § 841 (Supp. 1955)). This contained, among other things, amendments to the Internal Security Act of 1950 and had to do, in part at least, with infiltration by communists into labor unions. Other changes having to do with communist infiltration into organizations were also included.

large part upon the knowledge and the attitude of the witness, whether present before the Committee or represented by the testimony of another. We note at this point that the arguments directed to the invalidity of this inquiry under the First Amendment would apply to an inquiry directed to another person as well as to one directed to the individual himself. . . ."

And at p. 247 we said:

"Moreover, that the governmental ideology described as Communism and held by the Communist Party is antithetical to the principles which underlie the form of government incorporated in the Federal Constitution and guaranteed by it to the States, is explicit in the basic documents of the two systems; and the view that the former is a potential menace to the latter is held by [fol. 184] sufficiently respectable authorities, both judicial and lay, to justify Congressional inquiry into the subject. In fact, the recitations in the opinion of the Supreme Court in Schneiderman v. United States, 1943, 320 U.S. 118, 63 S.Ct. 1333, 87 L.Ed. 1796, are sufficient to justify inquiry. To remain uninformed upon a subject thus represented would be a failure in Congressional responsibility."

Congress has before it the important duty to legislate effectively, but at the same time wisely, upon the problems posed by the world communist movement. It cannot perform that duty without information. It ought not try to perform it without information. We think the Act authorized an inquiry into infiltration by communists into labor unions and that this inquiry was such an inquiry. The face of the Act seems to us to speak for itself. The inquiry here is likewise plain on its face. It was whether certain persons, members of the union, were indeed communists. The inquiry was specific. It seems to us it was directly part of the inquiry the Committee was directed to make.

Points four and five of appellant's statement of errors can be combined for our purposes here. He says the Committee asserted an independent power of exposure. Congress has power of exposure if the exposure is incident to the exercise of a legislative function. Congress certainly

has the power of inquiry or of investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The fact that such an inquiry or investigation may reveal something or "expose" something is incidental and without effect upon the validity of the inquiry.

Appellant would have us judge the present controversy upon the basis of speeches made by members of Congress and others, and upon newspaper articles, etc. We cannot do so. Such material is not evidence. The question is an individual one, whether the inquiry is indeed pertinent to a valid legislative purpose. It cannot be solved by general-[fol. 185] ities culled from speeches—many of them no doubt partially extemporaneous—or from partisan assailants, critics, friends or defenders of some project or cause. Moreover, even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry. We must judge each inquiry in its own setting and upon its own facts.

Appellant cites many authorities, beginning with *Kilbourn* v. *Thompson*, 103 U.S. 168, to the effect that Congress does not possess the general power of making inquiry into the private affairs of citizens. This point needs no additional exploration. The inquiry here had to do with a valid legislative purpose.

In *Young* v. *United States*, 212 F.2d 236, cert. denied, 347 U.S. 1015 (1954), this court pointed out that a committee, holding a hearing to substantiate an earlier report pertinent to legislation pending before the Congress, was engaged in a legislative function and its competency was not subject to question in a subsequent prosecution. Further in that case we indicated that this legislative purpose for which the subcommittee had convened was not vitiated by the incidental desire of the subcommittee to give interested parties a chance to reply to statements made in such report.

Having volunteered an attack on the credibility of a prior witness, appellant could not later refuse to answer questions concerning Communist Party membership of other union associates of appellant and of the prior witness on the ground that this particular phase of testimony was beyond the scope of the Committee's investigating power.

Indeed, an inquiry may not only be detailed when credibility is involved but "a legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." Cf. [fol. 186] *Townsend* v. *United States*, 68 App.D.C. 223, 95 F.2d 352, cert. denied, 303 U.S. 664 (1938).

We have examined appellant's other points urged on this appeal and find no error.

The judgment of the District Court is

Affirmed.

Circuit Judge BURGER, who took office after the hearing and consideration of this case, took no part in its decision. [fol. 187] / EDGERTON, *Chief Judge*, with whom BAZELON, *Circuit Judge*, joins, *dissenting:** The appellant has been convicted of refusing to answer certain questions before a subcommittee[1] of the Committee of the House of Representatives on Un-American Activities. He told the Committee he had cooperated with the Communist Party from 1942 to 1947. He did not plead the Fifth Amendment. Asked whether he knew certain persons as Communists, he answered freely concerning all whom he believed to be Communists at the time of the hearing. He refused to answer concerning other persons. As the District Court said in sentencing him, he did not "attempt to impede the committee in any respect, other than his refusal to answer questions dealing with persons who, to use his words, 'may in the past have been Communist Party members or otherwise engaged in Communist activities, but who to my best knowledge and belief have long since removed themselves from the Communist movement.'" We have to decide whether his refusal to expose their past history was a crime.

Since 1953 he has been a United Automobile Workers organizer. From 1935 to 1953 he was employed by the In-

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* This opinion is nearly identical with one which, as the majority of a division of the court, we filed January 26, 1956, and which was superseded when a rehearing *in banc* was ordered.

[1] We shall call the subcommittee the Committee.

ternational Harvester Company at East Moline, Illinois, but from 1942 to 1953 he was on leave and worked for the Farm Equipment Workers, CIO, and its successor. At a hearing of the Committee in 1952, one Spencer named him as having been a member of the Communist Party between 1943 and 1946. At a hearing of the Committee in Chicago in March 1954, one Rumsey testified that in 1942 or 1943 Watkins recruited him into the Party and collected his Party dues.

[fol. 188] In April 1954, in response to a subpoena, Watkins appeared and testified before the Committee in Washington. He said: "I am not now nor have I ever been a card-carrying member of the Communist Party. Rumsey was wrong when he said I had recruited him into the party, that I had received his dues . . . Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings.

"I would like to make it clear that for a period of time from approximately 1942 to 1947 I cooperated with the Communist Party and participated in Communist activities to such a degree that some persons may honestly believe that I was a member of the Party. I have made contributions upon occasions to Communist causes. I have signed petitions for Communist causes. I attended caucuses at an FE convention at which Communist Party officials were present. Since I freely cooperated with the Communist Party I have no motive for making the distinction between cooperation and membership except the simple fact that it is the truth. I never carried a Communist Party card. I never accepted discipline and indeed on several occasions I opposed their position.

"In a special convention held in the summer of 1947 I led the fight for compliance with the Taft-Hartley Act by the FE-CIO International Union. This fight became so bitter that it ended any possibility of future cooperation."

He was asked: ". . . with whom did you participate in the Communist Party in [its] activities . . .?" He named several people. Mr. Kunzig, Committee counsel, said: "Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago. I am asking you first whether you know these people." He did not

know the first three. He knew the fourth, who was Spencer, [fol. 189] and the fifth, one Harold Fisher. He was asked, "Do you know Harold Fisher to be a member of the Communist Party?"[2] He consulted his counsel and then read this statement to the Committee: "I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and who I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.

"I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, [fol. 190] I most firmly refuse to discuss the political activities of my past associates."

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[2] As to all except Fisher and one other, the Committee's questions were expressly about past Party membership. As to those two persons, the questions were phrased in the present tense. But in view of the earlier testimony of Rumsey and Spencer, who set the dates of appellant's Party affiliation from 1943-46, and appellant's uncontradicted statement that he had ceased cooperation with the Party in 1947, it is plain that the Committee was questioning appellant about the past. He did not refuse to testify about the present. His statement which we proceed to quote shows that when he replied to a question about present membership by standing on the statement, he was in effect denying that he knew the named individual to be a present member of the Party and refusing to answer about past membership.

After testifying that Joseph Stern, one of the men on the Committee's list, had carried on Party activities, he said: "In regard to the other names that you have read, I will not answer, based upon the statement that I read into the record . . ." The Committee directed him to answer. He refused again. The Committee did not question him further.

He was indicted in November 1954 and tried in May 1955. He waived a jury. The government called only one witness, the Committee counsel, who put into the record the transcript of the Committee's examination of Watkins. The court found Watkins guilty, fined him $500, sentenced him to a year's imprisonment, suspended the sentence, and placed him on probation.

I

The Committee on Un-American Activities is a standing committee of the House of Representatives. The Committee and its subcommittees are authorized by an Act of Congress "to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." 60 Stat. 812, 823, 828.

A witness before a congressional committee is guilty of a misdemeanor if he "refuses to answer any question pertinent to the question under inquiry . . ." 2 U.S.C. §192, R.S. §102, 52 Stat. 942, as amended. Pertinence is part [fol. 191] of the government's case. In order to convict, the government must plead and prove that the questions the witness would not answer were pertinent to an inquiry Congress had authorized. *Sinclair* v. *United States*, 279 U.S. 263, 296-297. *Bowers* v. *United States*, 92 U.S. App. D.C. 79, 80, 202 F. 2d 447, 448; *Keeney* v. *United States*, 94 U.S. App. D.C. 366, 369, 218 F. 2d 843, 845.

An important preliminary question is whether the authorizing act is to be construed broadly or narrowly for the

purpose of deciding whether the questions Watkins would not answer were pertinent to the inquiry authorized. The Act must be construed narrowly if a narrow construction avoids a serious constitutional question. *United States* v. *Rumely*, 345 U.S. 41.

If the questions Watkins would not answer were pertinent to the inquiry authorized by the Act, we should have to decide whether they were within the constitutional power of Congress. Like the question in the *Rumely* case, this question is serious, as we shall presently show. It follows that, for the purposes of this case, the Act must be construed narrowly if the questions Watkins refused to answer would otherwise appear pertinent.

"There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power . . . is indeed co extensive with the power to legislate. . . *It cannot be used to inquire into private affairs unrelated to a valid legislative purpose.* Nor does it extend to an area in which Congress is forbidden to legislate. Similarly, the *power to investigate must not be confused with any of the powers of law enforcement;* those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privi- [fol. 192] lege against self-incrimination . . ." *Quinn* v. *United States*, 349 U.S. 155, 160, 161 (1955). (Emphasis added.)

The only limitation dealt with in the *Quinn* case was the privilege against self-incrimination. The fact that the Supreme Court called attention to other limitations, including the necessity of a "valid legislative purpose", suggests that the Court shares the "wide concern, both in and out of Congress, over some aspects of the exercise of the congressional power of investigation." *United States* v. *Rumely*, 345 U.S. 41, 44.

It is very questionable whether exposure of individuals to public contempt or hostility is a "valid legislative purpose". Since Congress has "no powers of law enforcement" it would have no power, in the absence of a valid legislative purpose, to expose former Communists, even if

there were a law requiring that former Communists be exposed. If we were obliged to decide what the Committee's purpose was in asking the questions Watkins would not answer, we might be forced to conclude that the Committee asked them for the sole purpose of exposure.

By "exposure" we mean injurious publicity. The fact that Rumsey, at Chicago in March, publicly called Fisher a Communist, does not mean that if Watkins had done so at Washington in April, this new publicity and its repetition in and out of the press would not have been injurious. Obviously the new publicity would have been injurious. As the law of slander and libel recognizes, the fact that a derogatory statement has been made previously does not make it harmless. And the fact that Rumsey had called Fisher a Communist does not show that the Committee sought to serve some other purpose than injurious publicity when it asked Watkins "Do you know Harold Fisher to be a member of the Communist Party?"

[fol. 193] II

The government argues that the Committee's purpose in asking the questions was to investigate Communist infiltration of labor unions, in order to determine the need for pending legislation to deprive Communist-infiltrated unions of the use of the National Labor Relations Board.[3]

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[3] In opening the hearing in Washington at which Watkins testified, on April 29, 1954, the chairman said nothing directly about purpose. He said: "The hearing this morning is a continuation of the hearings which were held in Chicago recently . . . ." In opening the Chicago hearings, in March 1954, the chairman said Congress had directed the Committee "to ascertain the extent and success of subversive activities directed against these United States", and mentioned bills of two sorts as pending before the Committee, one of which would make evidence "secured from confidential devices" admissible in "cases involving the national security." Another, he said, "would provide that the Subversive Activities Control Board should, after suitable hearings and procedures, be empowered to find if certain

But several aspects of the Committee's examination of Watkins tend to show that the Committee did not ask these questions for that purpose, or for any purpose except exposure.

(1) The Committee made no attempt to learn from Watkins either the total number of Communists in his union, or what positions Communists held in the union, or whether or how, or how far, or in what direction, they influenced the union. The Committee showed no interest in anything but a list of names. Whether Communist infiltration of unions creates a need for legislation would seem to depend on the number, and the nature, extent, and effectiveness of the activities, of Communists in [fol. 194] unions. Watkins named several people, who apparently had been fellow-members of his union, as having been Communists while he cooperated with the Party. If the Committee had been questioning him for a legislative purpose, it could hardly have failed to question him about what, if anything, these Communist members of the union did.

(2) It is not clear, and the government does not suggest, how the questions Watkins would not answer could have served the purpose the government now attributes to the Committee.

These questions concerned the presence of Communists in a union between 1942 and 1947. Their presence or absence in unions then had little or nothing to do with the question whether, at the time of the Committee hearing in 1954, Communists in unions were so numerous, so active, and so effective as to create problems that called for legislation. This is true partly because of the lapse of time, but chiefly because times had changed and legislation had changed.

Communist affiliation between 1942 and 1947 did not mean what Communist affiliation meant in 1954. "In De-

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labor organizations are in fact Communist-controlled action groups. Following this action, such labor groups would not have available the use of the National Labor Relations Board as they now have under the provisions of the Labor-Management Relations Act of 1947."

cember 1941 the United States joined Russia in the war against Germany. President Roosevelt wrote to Admiral Land in January 1942: "I am still terribly disturbed about the fact that an adequate number of ships are not available for Russia. . . . This Government has made a firm pledge to Russia and we simply cannot go back on it." In February 1942 General MacArthur honored the 25th anniversary of the Red Army with a message in which he said: ". . . the hopes of civilization rest upon the worthy banners of the courageous Russian Army. . . ."[4] Friendly relations between the United States and [fol. 195] Russia continued throughout the war and did not cease immediately at the end of the war.

The Labor Management Relations Act, which requires non-Communist affidavits from officers of unions that use the National Labor Relations Board, was not passed until 1947, close to the end of the period to which the Committee's questions relate. Whether the Act is adequate or requires strengthening would seem to depend upon what has happened since, not what had already happened. Likewise the Internal Security Act and the Immigration and Nationality Act, passed in 1950 and 1952, were in effect at the time of the Committee hearing but not at the time to which the Committee's questions relate.[5]

(3) When Watkins refused to answer the Committee's questions, saying he thought their purpose was "public exposure of persons because of their past activities", the Committee was under no obligation to reply. However, the chairman chose to reply. His reply did not suggest that the questions had a legislative purpose related to unions. It did not mention unions. Instead, it claimed for the Committee unlimited authority to question Watkins concerning his knowledge of former Communists. The chairman said: "This committee is set up by the House of Rep-

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[4] Quoted in Robert E. Sherwood, ROOSEVELT AND HOPKINS, p. 496, 497 (1948).

[5] 64 Stat. 987; 66 Stat. 163. The Communist Control Act of 1954 is not pertinent in this connection, since it was passed in August 1954, after the Committee hearing. 68 Stat. 775.

resentatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation. The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Representatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members of the Com- [fol. 196] munist Party, and so, Mr. Watkins, your are directed to answer the question propounded to you by counsel."

(4) The Committee seems to have had in its possession, before it questioned Watkins, the information about other persons which it asked him to supply.[5a]

(5) The purpose the government attributes to the Committee, and practically any other purpose except exposure, might have been served by questioning Watkins in a closed session. But the Committee questioned him at a public hearing.

III

Words and conduct of the Committee on other occasions go far to confirm the inference that its purpose on this occasion was exposure.

"The Committee and its members have repeatedly said in terms or in effect that its main purpose is to do by exposure and publicity what it believes may not validly be done by legislation."[5b]

At the trial, the defense offered in evidence "excerpts from House committee reports, House committee hearings, Congressional Record statements and newspapers, going to the point that the House committee asserts an independent power all apart from legislation to expose persons

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[5a] *Cf. Slochower* v. *Board of Education*, — U.S. —, decided April 9, 1956 (slip opinion p. 7.)

[5b] Dissenting opinion in *Barsky* v. *United States*, 83 U.S. App. D.C. 127, 142, 167 F. 2d 241, 256. A footnote quotes many such statements.

to public knowledge." The court excluded these excerpts as evidence, but they are in the record as an offer of proof. They cover some 64 printed pages.[6] They show beyond [fol. 197] doubt, and it is not disputed, that the Committee on Un-American Activities claims an independent power of exposure and sometimes investigates for the purpose of exposure. We give a few illustrations.

Mr. Dies, the first chairman of the Committee, said during debate in the House on his resolution for the appointment of such a Committee, "I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession."[7]

The Committee said in 1951: "Exposure in a systematic way began with the formation of the House Committee on Un-American Activities, May 26, 1938. . . . The House Committee on Un-American Activities was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job, and to that job it sticks."[8]

Mr. Velde, the Chairman of the Committee in the 83d Congress, who presided at the Watkins hearing, said at another hearing: "we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purpose of remedial legislation but to inform the people who elected us about subversive activities. . . ."[9]

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[6] Counsel stipulated that the excerpts from official sources are accurate and that those from newspapers are "true and correct quotations, digests or reports as the case may be of the statements and events reported therein."

[7] 83 Cong. Rec. 7570 (May 26, 1938). Quoted in Robert K. Carr, The House Committee on Un-American Activities (1952) at p. 15.

[8] *100 Things You Should Know About Communism* (1951), 82d Cong., 1st Sess., House Document No. 136, pp. 19, 67.

[9] Hearing Before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st Sess., p. 1106.

Chairman Walter said in 1955: "Unlike most congressional committees, in addition to the legislative functon we are required to make the American people aware if [fol. 198] possible of the extent of the infiltration of Communism in all phases of our society." [10]

The Committee has publicized the names of persons identified to it as Communists or former Communists. Its Report for 1952 devotes 54 out of a total of 89 pages to the names and addresses of such persons. Its Report for 1953 devotes 59 out of 193 pages to a similar list.

Though the Committee's Report for 1954, the year of the Watkins hearing, does not contain a list of names, it points to exposure as the Committee's function. It says, *e.g.*, that in 1952 the Committee "reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained. . . . During the committee's investigation, it uncovered members of the Communist Party holding influential positions in the school systems of Detroit and other communities. . . . Most of the teachers called have been suspended or permanently removed from their positions. The Committee on Un-American Activities approves of this action . . ." [11] In a separate pamphlet issued in 1954 the Committee said: "This committee and the special committee have over the past 16 years held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts." [12]

The District Court ruled that express claims of an independent power of exposure, made without particular reference to the Watkins hearing, do not tend to prove that the Committee's purpose in the Watkins hearing was exposure. In our opinion this was error. Although gen- [fol. 199] eral propositions do not decide concrete cases, they help to decide them. Intentions tend to result in acts. By claiming that it had the authority and duty to expose,

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[10] U.S.News and World Report, August 26, 1955, p. 71.

[11] Committee on Un-American Activities, Annual Report for the Year 1954, pp. 14-15, 17.

[12] *This is YOUR House Committee on Un-American Activities*, p. 25.

the Committee implied that it intended to expose.' And as the Fifth Circuit recently said, "of course it may be inferred from a person's statement that he intended to do something, that he later actually did it. Mutual Life Ins. Co. of New York v. Hillmon, 145 U.S. 285, 295, 12 S. Ct. 909, 36 L. Ed. 706." *Shurman* v. *United States*, 219 F. 2d 282, 290, fn. 9 (1955).[13]

IV

In our opinion the questions Watkins refused to answer are not pertinent to the inquiry authorized by the Act, even if the Act is not construed narrowly. If it is construed narrowly, the questions are clearly not pertinent.

The key words of the Act are (i) "extent, character and objects of un-American propaganda activities"; (ii) "diffusion . . . of subversive and un-American propaganda"; [fol. 200] and (iii) "questions in relation thereto that would aid Congress in any necessary remedial legislation." The questions do not relate in any clear or direct way to the extent, the character, the objects, or the diffusion, of any propaganda, subversive and un-American or otherwise. The government has not shown that in asking these questions the Committee was seeking, even indirectly, information about the extent or character or objects or diffusion of propaganda. It has not shown that Watkins, or his union,

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[13] *Morford* v. *United States*, 85 U.S.App.D.C. 172, 176 F. 2d 54, *reversed* on other grounds, 339 U.S. 258, is not to the contrary. Morford refused to give the Committee on Un-American Activities the financial records, and the names of the publications committee, of the National Council of American-Soviet Friendship, which had put out "a flood of propaganda . . . of the nature described in the Resolution". Unlike this case, the Committee's questions were clearly pertinent to its authorized investigation and nothing in its examination of the witness suggested that it did not ask the questions for that purpose. The presumption of a legislative purpose, which resulted, "cannot be rebutted by impugning the motives of individual members of the Committee." 85 U.S.App.D.C. at 176, 176 F. 2d at 58. No one's motives are impugned by showing the Committee's concept of its duty.

or the persons about whom the Committee inquired, engaged in propaganda, or that the Committee sought to learn whether they did.

As to clause (iii) of the Act: possibly questions concerning Communist Party membership might be considered "questions in relation" to the "extent, character and objects" or the "diffusion" of propaganda, if the phrase "in relation" were construed very broadly, but these questions certainly cannot be so considered if the phrase is construed narrowly. Moreover, clause (iii) contains the further requirement that the questions "would aid Congress in any necessary remedial legislation". If a mere theoretical chance of very slight aid were to be considered sufficient, possibly it might be thought that the questions "would aid". But that would be a broad construction of those words. Construed narrowly, the words require more than a theoretical chance. The questions Watkins would not answer plainly do not meet this requirement.

"The United States suggests that the presumption of regularity is sufficient without proof. But, without determining whether that presumption is applicable to such a matter, it is enough to say that the stronger presumption of innocence attended the accused at the trial." *Sinclair* v. *United States*, 279 U.S. 263, 296. We conclude that the government failed to show, either beyond a reasonable doubt or even by a preponderance of the evidence, that the ques-[fol. 201] tions Watkins would not answer were pertinent to any investigation the Committee was authorized to make.

Barsky v. *United States*, 83 U.S. App. D.C. 127, 167 F. 2d 241, is not to the contrary. The court held that, in the circumstances of that case, Congress and the Committee on Un-American Activities had "power to make an inquiry of an individual which may elicit the answer that the witness is a believer in Communism or a member of the Communist Party." 83 U.S. App. D.C. at 136, 167 F. 2d at 250. But the circumstances of that case and of this are very different. (1) As the court pointed out, Barsky and his co-defendants "were not asked to state their political opinions. They were asked to account for funds". 83 U.S. App. D.C. at 130, 167 F. 2d at 244. (2) As the court pointed out, the Congressional Committee had been informed that Barsky's organization, the Joint Anti-Fascist Refugee

Committee, was engaged in "political propaganda". 83 U.S. App. D.C. at 129, 167 F. 2d at 243. It has not been shown that the Congressional Committee had any comparable information in this case. (3) The question Barsky refused to answer related, though indirectly, to his *present* Communist membership. The questions Watkins refused to answer related to Communist membership of other persons at a time long past. To hold, as *Barsky* does, that the Committee may inquire whether members of an organization shown to engage in propaganda are now Communists, does not imply that it may inquire whether members of a union not shown to engage, or to be likely to engage, in propaganda were once Communists.[14]

[fols. 202-204] We need not consider appellant's other contentions.

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[14] In *Lawson* v. *United States*, 85 U.S. App. D.C. 167, 176 F. 2d 49, the Committee asked each of two "prominent writers" in the motion picture industry "whether or not he was or had ever been a member of the Communist Party". Though this question included past as well as present membership, neither the briefs nor the opinion of the court show consideration of the fact. The court's ruling, as expressed, is limited to questions regarding *present* membership: "we expressly hold herein that the House Committee on Un-American Activities, or a properly appointed subcommittee thereof, has the *power* to inquire whether a witness subpoenaed by it is or is not a member of the Communist Party or a believer in Communism . . ." The court held that since motion pictures "are, or are capable of being, a potent medium of propaganda dissemination", the question was pertinent. 85 U.S.App.D.C. at 170, 171, 176 F. 2d at 52, 53.

[fol. 205] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1956

No. 12,797

JOHN T. WATKINS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Appeal from the United States District Court for the District of Columbia

Before Edgerton, Chief Judge, and Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher and Bastian, Circuit Judges

JUDGMENT—April 23, 1956

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Dated: April 23, 1956.

Per Circuit Judge Bastian.

Separate dissenting opinion by Chief Judge Edgerton, with whom Circuit Judge Bazelon joins.

Circuit Judge Burger, who took office after the hearing and consideration of this case, took no part in its decision.

[fol. 206-207] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Before Edgerton, Chief Judge; Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers

ORDER DENYING REHEARING—May 22, 1956

Upon consideration of appellant's petition for a rehearing in the above case, it is

Ordered by the Court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Circuit Judges Bazelon and Washington did not participate in the foregoing order.

[fol. 208] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 209-210] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 31, 1956

Upon consideraiton of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 20th, 1956.

Earl Warren, Chief Justice of the United States.

Dated this 31st day of May, 1956.

[fol. 211] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

(1972-9)

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No.

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, John T. Watkins, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

Opinions Below

The judgment and sentence of the District Court are not reported; they appear on pages 17 and 18 of the Record. The majority and dissenting opinions of the Court of Appeals have not yet been reported, but are printed in Appendix A, *infra*, pp. 39 to 66.

Jurisdiction

The initial opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit reversing the judgment of conviction were entered on January 26, 1956. After rehearing *en banc*, the initial opinion and judgment of the Court of Appeals were reversed on April 23, 1956, and an opinion and judgment were entered affirming the conviction. Petitioner's timely petition for rehearing was denied on May 22, 1956. On May 31, 1956, Mr. Chief Justice Warren entered an order extending the time within which a petition for certiorari might be filed until July 20, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

Petitioner appeared in response to a subpoena and testified fully before the Committee on Un-American Activities of the House of Representatives concerning his own past activities in the Communist movement. He refused to answer certain questions of the Committee relating to the identification of a number of individuals alleged to have been members of the Communist Party some ten years before. Thereafter he was cited for contempt and convicted of violating 2 U.S.C. § 192 by his refusal to answer. The questions presented by this petition are:

1. Does the Committee on Un-American Activities have a separate and distinct power under the Constitution to engage in the exposure of individuals as distinguished from its limited power to engage in such exposure as may be ancillary and incidental to its legislative activities?

2. If the Committee has no such separate and distinct power to engage in the exposure of individuals, was the questioning of petitioner, in the circumstances

of this case and in light of the Committee's repeated assertions of a separate and distinct power of exposure, an exercise of its asserted function of exposure and therefore beyond the constitutional authority of the Committee?

3. Does the First Amendment to the Constitution of the United States protect against forced disclosure of one's past political associations under the circumstances of this case?

4. Is 2 U.S.C. § 192, read together with the authorization of the Committee on Un-American Activities, so vague and indefinite as to violate the due process clause of the Fifth Amendment to the Constitution of the United States?

5. Is a defendant entitled to a dismissal of an indictment or a preliminary hearing thereon when he alleges by motion and affidavit that less than twelve jurors on the grand jury which indicted him were able to exercise an independent judgment by reason of the fear engendered by operation of the government employees security programs, a fear which amounted to actual bias and prejudice against him?

Statutes Involved

2 U.S.C. § 192, R.S. 102 (52 Stat. 942), as amended, provides:

"Refusal of witness to testify.

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default,

or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 812, 823, 828) provides in relevant part:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"Rule XI

"*Power & Duties of Committees*

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively: . . .

• • • • •

"(q)(1) Committee on Un-American Activities.

"(A) Un-American activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Statement

John T. Watkins, petitioner herein, resides in Rock Island, Illinois (R. 71).[1] He has been an organizer for the United Automobile Workers since August 1953 (R. 72). Prior to that time he had been employed by other labor organizations (R. 72), including the Farm Equipment Workers, where in 1947 he had led the battle against the Communist faction for compliance with the Taft-Hartley Act (R. 75).

Petitioner was named as a member of the Communist Party in the period 1943-1946 by one Donald O. Spencer, who testified before the Committee on Un-American Activities [2] in a hearing in Chicago in September 1952 (R. 73, 154). Petitioner was not called to testify before the Committee at that time.

Petitioner was identified again as a member of the Communist Party in the early 1940s (R. 33-34, 136) when Walter Rumsey appeared before the Committee in March 1954. Thereafter petitioner was subpoenaed to appear, and on April 29, 1954, did appear, before the Committee (R. 70).

Prior to his appearance, petitioner had prepared a respectful and courteous written statement that he would tell the Committee all about himself but would not inform on past and reformed associates (R. 40, 85). He was prepared to, and did, answer all questions about himself. He frankly admitted cooperating with the Communist Party from 1942 to 1947 and willingly answered the few questions put to him about the extent of his cooperation with the Party (R. 75-77). He categorically denied past or present membership

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[1] The record references (R.) are to the pages of the Joint Appendix in the court below, copies of which have been supplied to the Clerk for distribution with this petition.

[2] The Committee on Un-American Activities of the House of Representatives will generally be referred to throughout this petition as "the Committee."

in the Communist Party; he reiterated those denials with respect to the details of both Spencer's and Rumsey's testimony about himself.

Petitioner was entitled to claim the privilege against self-incrimination for all his testimony concerning Communist Party membership, cooperation and associates. *Blau* v. *United States*, 340 U. S. 159; *Emspak* v. *United States*, 349 U.S. 190. But he was as unwilling to use this solution to his problem as he was to inform on his past and reformed associates. At the appropriate point in the hearing, he read the Committee his prepared statement, as follows (R. 85):

> "I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.
>
> "I do not believe that such questions are relevant to the work of this committee *nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities.* I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the politi-

cal activities of my past associates." (Emphasis supplied.)

Petitioner followed the line of distinction in his statement in responding to the Committee's questioning. He declined to state whether or not a list of 29 persons, who had been named by Rumsey (and in most instances by Spencer also), had been known by him to be members of the Communist Party; significantly, in the one case where he believed the man still to be a member of the Party, petitioner interrupted this series of questions and answers to respond affirmatively with respect to Joseph Stern, whom he described as "carrying on Communist Party activities" in the Quad City area (R. 90).[3]

The Committee questioned him no further after his refusal to answer concerning the Party membership of the 29 individuals; it evinced no interest in any activities of petitioner jointly with Joseph Stern or the other 29 individuals or otherwise. Once he refused to expose, the Committee dismissed him (R. 91).

On May 11, 1954, the House of Representatives voted a contempt citation against petitioner, and on November 22, 1954, he was indicted under 2 U.S.C. §192 on seven counts for refusal to answer the Committee's questions as to whether the 30[4] named persons had been members of the Communist Party.

Petitioner moved to dismiss the indictment, or for preliminary hearing, on the ground that less than twelve jurors on the grand jury which indicted him were able to exercise an independent judgment by reason of the

[3] Earlier petitioner had identified Gil Green, Fred Fine, and Bill Sentner in line with this same policy (R. 80).

[4] The indictment contains 31 names (R. 2-3). One of these, however, is a duplicate (Marie Wilson) and another is Joseph Stern about whom petitioner answered.

fear engendered by operation of the government employees security programs, a fear which amounted to actual bias and prejudice against him (R. 4-10). The motion was denied (R. 11).

Prior to trial, on May 16, 1955, petitioner served upon the Clerk of the Committee (and in case he should not have possession, also upon the Clerk of the House of Representatives), identical subpoenas calling for all the information in the possession of the Committee relating to petitioner and the persons named in the questions set out in the indictment (R. 11-14). The Government moved to quash these subpoenas primarily upon the ground that the material sought was irrelevant (R. 15), also asserting that it would take "three research analysts approximately two weeks to assemble the documents sought and would take a truck to bring it to the courthouse" (R. 19, 46). Petitioner filed counter-motions, requesting the court to rule the documents relevant and material to petitioner's defense and further to request the House of Representatives to permit the inspection and copying of the documents (R. 16).[5] Petitioner also moved for the dismissal of the indictment should the material essential to his case not be produced. The District Court quashed the subpoenas on the ground that the "documents which the subpoena seeks are not relevant to the issues in this case," and denied petitioner's counter-motions (R. 19).

Trial by jury was waived and the trial commenced on

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[5] Petitioner's motion took this form because the House of Representatives has traditionally asserted a privilege to refuse access to documents even to the courts. 6 Hinds, *Precedents*, §587. However, the House will under certain circumstances, after affirmative vote of the House, make documents in its possession available for inspection and copying by a court and the parties. It has been the recent general practice of the House to grant such permission in cases in which the court finds that the documents subpoenaed are relevant and material. See instances cited in the Manual of the House of Representatives (1955) §291.

May 25, 1955 (R. 18). The Government called only Mr. Kunzig, who had been counsel for the Committee at the time petitioner testified. Mr. Kunzig read for the record the transcript of petitioner's appearance before the Committee, and testified as to certain aspects of Committee procedure. On cross-examination, counsel for petitioner read to Mr. Kunzig the Government's statement in its motion to quash the subpoenas that "it would take three research analysts approximately two weeks to assemble the documents sought [i.e., relating to petitioner and those about whom he was questioned and refused to answer] and would take a truck to bring it to the courthouse." Despite the fact that the District Judge, who had already ruled that this material was not relevant to the issues in the case, sustained objections to many questions put to Mr. Kunzig on this point, a reading of Mr. Kunzig's full testimony on this matter (R. 49-52) leaves little doubt that this truckload of material was never examined prior to the issuance of the subpoena to petitioner or prior to his testimony at the hearing.

At the close of the Government's case, the defense renewed its motion to dismiss on the ground that the grand jury was improperly constituted (R. 53). It also moved to dismiss, or for a judgment of acquittal, on the grounds that the Committee, in asking the questions petitioner would not answer, was engaged in the exposure of individuals unrelated to any legislative purpose and was thus exceeding its constitutional powers as a congressional investigating committee, that 2 U.S.C. §192, read together with the Committee's authorizing resolution, was so vague and indefinite as to deprive petitioner of due process of law, that the First Amendment protected petitioner against forced answers to the particular questions asked him, and on a number of other grounds not pursued in the Court

of Appeals or in this Court (R. 53-56). The District Court denied all of petitioner's motions (R. 17, 56).

The defense opened its case by renewing its motion to the court to request the House of Representatives to permit the inspection and copying of the material described in the subpoenas, which was denied (R. 58). Thereupon, the defense made an offer to prove "through the subpoenaed material that the committee had in its files all the information which it sought to elicit from the defendant about him and each of the other 30 individuals referred to and, in fact, a great deal more such information" from which "it would follow that the committee had no legislative purpose in its questions to defendant but rather had the sole purpose of . . . exposing him to the contempt of his labor associates by forcing him to inform on past associates and exposing to public contempt through the mouth of the defendant the persons about whom he was questioned" (R. 58-59). The defense further offered to prove, in large part by official public statements of the Committee, that the Committee has asserted a function and power to expose individuals to the public independent of any function related to legislation (R. 60). The District Court sustained the Government's objection to this evidence and it was included in the record as an offer of proof (R. 62-64).

The District Court thereupon found petitioner guilty (R. 64), and subsequently imposed a sentence of a $500 fine and a suspended sentence of imprisonment for one year (R. 18). At the time of sentencing the Court stated:

> "While I have found him guilty of contempt of Congress, he did not evidence any disrespect before the committee or engage in any disorderly conduct or attempt to impede the committee in any respect, other than his refusal to answer questions dealing with persons, who, to use his words,
>
> 'may in the past have been Communist Party mem-

bers or otherwise engaged in Communist activities, but who to my best knowledge and belief have long since removed themselves from the Communist movement.'

In other words, he claimed that he should not be required to 'inform' on people he had known.

"He answered all questions about himself and his own activities. He did not claim the Fifth Amendment. He claimed it would be wrongful to testify with respect to former associates. He stated that he would answer if a court of law directed him to do so. In taking this position, he acted on the advice of counsel. While his reasons for refusing to answer do not constitute a defense, I think they should be taken into consideration in determining the penalty which should be imposed for the violation of the statute."

From the judgment of conviction and sentence, petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit. A panel of that Court, on January 26, 1956, reversed the conviction by a two-to-one majority and remanded the case with directions to enter a judgment of acquittal.[6] After the government's petition for rehearing *en banc* was granted[7] and the case reargued

[6] The opinion of the majority of the panel (Chief Judge Edgerton and Circuit Judge Bazelon) is "nearly identical" with the dissenting opinion of the same two judges after the case was reargued *en banc*. See p. 51, *infra*.

[7] The determination of the Chairman of the Committee to protect his asserted untrammeled power of exposure is evidenced by his own statement about petitioner's case while testifying on February 23, 1956, before another committee of Congress on an appropriation bill. There Mr. Walter stated: "The trouble is certain circuit courts of appeals lean over backwards to reverse convictions. It is such an outrageous thing that the Department of Justice on the insistence of your humble servant insisted on presenting a matter to a full court to review a decision. I invite you to look at the background of the two judges that set aside this conviction." *Hearings Before Subcommittees of the Committee on Appropriations*, House of Representatives, Eighty-fourth Congress, Second Session, Second Supplemental Appropriation Bill, 1956, p. 47.

before the full court, the court, largely accepting the opinion of the dissenting judge from the earlier panel, upheld petitioner's conviction by a majority of 6 to 2. See pp. 39 to 51, *infra*. Petitioner filed a petition for rehearing pointing out that the majority opinion seems to hold, erroneously, (i) that there *could* always be a valid legislative purpose in a Congressional committee asking witnesses whether certain persons had once been members of the Communist Party and (ii) that, therefore, since there *could* have been a valid legislative purpose, proof that there was in fact no valid legislative purpose in particular questions, but only a purpose to expose, does not invalidate Congressional committee action. Petitioner also pointed out in his petition for rehearing that the court had failed to make any reference in its opinion to the substantial question presented whether he had been deprived of his constitutional right to a fair and impartial grand jury. The petition for rehearing was denied.

Reasons for Granting the Writ

I

The Decision of the Court of Appeals Upholding the Power of the Committee to Compel Petitioner to Answer Questions Asked Solely as an Exercise of the Committee's Asserted Function of Exposure Conflicts With the Applicable Decisions of This Court and Constitutes an Important Question of Federal Law Involving the Basic Separation of Powers of Our Government

Petitioner contends (i) that it is beyond the power of the Committee on Un-American Activities to compel testimony for the sole purpose of *exposing* individuals to public scorn and retribution and (ii) that the questioning at which petitioner balked was such an exercise of the Committee's asserted power of exposure. The holding below, in reject-

ing petitioner's contention and proof of exposure on the apparent ground that there *could* have been a valid legislative purpose in the questions petitioner refused to answer, conflicts with the applicable decisions of this Court. *Kilbourn* v. *Thompson*, 13 Otto (103 U.S.) 168; *McGrain* v. *Daugherty*, 273 U. S. 135; *Sinclair* v. *United States*, 279 U. S. 263; *Quinn* v. *United States*, 349 U.S. 155, 160-161.

A. *The Implied Power of Congress to Investigate Is Limited by the Doctrine of Separation of Powers and Does Not Encompass Exposure Except Where Ancillary to a Valid Legislative Purpose*

The cornerstone of our government is the doctrine of separation of powers. "A legislative, an executive, and a judicial power comprehend the whole of what is meant and understood by government. It is by balancing each of these powers against the other two, that the efforts in human nature towards tyranny can alone be checked and restrained, and any freedom preserved in the Constitution."[8] "The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy."[9]

Legislative power concerns the determination by duly enacted law of general standards of conduct. The prosecution of individuals under duly enacted law is the concern of the law enforcement officers of the Executive branch of the Gov-

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[8] John Adams, letter to Richard Henry Lee, November 15, 1775; quoted by Benjamin F. Wright, "The Federalist on the Nature of Political Man," *Ethics*, January 1949, p. 9.

[9] *Myers* v. *United States*, 272 U.S. 52, 293 (per Brandeis, J., dissenting).

ernment. The determination of individual guilt and law violation is the concern of the Judicial branch. Courses of conduct or patterns of action may be legislatively inquired into only for the purpose of revealing the need for new laws and the effectiveness of existing laws, not for the purpose of exposure and punishment of the individual in the absence of law. When a committee of Congress determines that a general standard of conduct (e.g., past membership in the Communist Party) is reprehensible and seeks to enforce this standard by building a list of persons who engaged in that conduct and then, by publicity, inflicting upon such persons public scorn and retribution, the Committee is arrogating to itself, in this process of exposure, legislative,[10] executive and judicial functions in derogation of our historic separation of powers.

This is what we believe Chief Justice Warren meant when he wrote in the *Quinn* case last year that "the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary." 349 U. S. at 161. This is also what we believe Mr. Justice Miller meant when he wrote in the *Kilbourn* case, in a discussion stressing the doctrine of separation of powers, that no congressional committee "possesses the general power of making inquiry into the private affairs of a citizen." 103 U. S. at 190. For, when a congressional committee inquires publicly into the private affairs of a citizen not in aid of a legislative purpose but for the purpose of holding that citizen up to public scorn and retribution, that committee

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[10] If the Committee's determination of reprehensibility in the general standard of conduct (past membership in the Communist Party) can be deemed legislative in any sense, it is a legislative authority which belongs to the full Congress, not to one of its many committees. Furthermore, in so acting, the Committee is arrogating to itself legislative functions of a retroactive nature barred by the Constitution. Article I, § 9; Amendment V. See also *United States* v. *Lovett*, 328 U.S. 303.

is prescribing a general standard of conduct, not theretofore part of the law of the land, applying that standard and determining guilt under it. See also *Greenfield* v. *Russel*, 292 Ill. 392, 127 N.E. 102 (1920); *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463, 2 N. E. 615 (1885); Taylor, *Grand Inquest* (1955) pp. 30-183.

An example from another field might be helpful. Congress was acting within its constitutional authority in 1895 when it made the interstate transportation of lottery tickets a crime. *Champion* v. *Ames*, 188 U. S. 321. Despite this fact, no one would seriously contend that a congressional investigating committee could today use its compulsory process to build up a list and expose those who carried lottery tickets from state to state. Clearly this would be an encroachment upon the prosecutorial functions of the Executive and the adjudicatory functions of the Judicial branches. But how much more clearly would it have been an encroachment on the Executive and Judicial branches for a committee of Congress, in a wave of anti-gambling spirit in the early nineties, before the channels of interstate commerce were closed by law to lotteries, to have used its compulsory process to build up a list of those who had in years past carried lottery tickets across state lines and to have exposed them for their past conduct to public scorn and retribution. This would indeed have been setting a general standard of conduct, applying that standard and determining guilt under it. As we shall see, that is exactly what the Committee asserts the constitutional power to do and what it has done in this case.

Nowhere is the wisdom of the doctrine of separation of powers more evident than in the field of congressional inquiries. The events of the past years have shown what happens when a Congressional committee crosses the line from investigation in aid of legislation to investigation for the

purpose of exposure and retributive justice. The investigation turns into a legislative trial with the functions of prosecutor and judge combined [11] and the accused denied the right to impartial and independent judgment. The protections of the Bill of Rights fall by the wayside; partisanship, passion and prejudice are substituted for the safeguards of the courtroom. Jefferson was unusually foresighted, even for him, when he warned against legislative despotism in these words: "One hundred and seventy-three despots would surely be as oppressive as one." [12]

Both the history and logic underlying the doctrine of separation of powers combine with the experience of recent years in which congressional investigations have been invading the province of the Executive and the Judiciary to demonstrate the necessity for limiting congressional committees to inquiry in aid of legislation. Exposure for exposure's sake is beyond the pale.[13]

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[11] The Court will find significance, or at least amusement, in the Freudian slip of the tongue by committee counsel when he was testifying at petitioner's trial. When asked whether it was his responsibility to grant extensions of time on subpoenas, he answered: "Since at that point there were usually lawyers in the case, lawyers for *the defendants* — pardon me—lawyers for the witnesses, I usually then would be called by one of the attorneys for a witness, and then usually, after conferring with the chairman, would grant the extension" (R. 42) (emphasis supplied).

[12] The Federalist, No. XLVIII (1778), p. 341. President Truman made the same point when he stated that the investigative power, if exercised beyond obtaining information for legislative functions, "raises the threat of legislative dictatorship." New York Times, May 9, 1954, p. 54.

[13] We have predicated our argument here against the right to expose on the doctrine of separation of powers. The argument could have been equally well pitched upon the limitations on the investigative power arising from its nature as an adjunct to legislative authority. So too, a legislative inquiry designed not to further a legislative purpose but to try and expose an individual is a bill of attainder expressly prohibited by the Constitution. Article I, Section 9. Again, the forced public disclosure of unpopular associations without adequate legislative purpose abridges the right to speak, assemble and petition Congress guaranteed by the First Amendment. See *United States* v. *Rumely*, 345 U.S. 41,

John Quincy Adams made this point well many years ago in 1832 at another period of stress: [14]

> ". . . the authority of the committee and of the House itself did not extend, under color of examining into the books and proceedings of the bank, to scrutinize, for animadversion or censure, the religious or political opinions even of the president and directors of the bank, nor their . . . private lives or characters, nor their moral, or political, or pecuniary standing in society; . . ."

A modern legislator, with outstanding experience in investigations, likewise views exposure investigations as beyond the power of Congress:

> ". . . the rights of Congress are no broader than the legitimate objects from which they have been implied. And I believe those objects are *only* the two referred to a moment ago: (1) to gather facts about proposed legislation, and (2) to inquire into the workings of existing federal laws. . . . I disagree strongly with those who argue that Congress is also responsible for informing and educating the public by looking into anything which may happen to catch the popular fancy of the moment." Keating, *Protection for Witnesses in Congressional Investigations*, 29 Notre Dame Lawyer 212, 214.

43-45. Finally, the contempt statute, read together with the authorization of the Committee on Un-American Activities, would quite clearly be unconstitutionally vague and indefinite if not limited to questions in aid of a legislative purpose. All of these constitutional doctrines—separation of powers, limited legislative authority, bill of attainder, freedom of speech and assembly, vagueness and indefiniteness—lead inexorably to the same conclusion forbidding exposure for exposure's sake.

[14] Quoted in Taylor, *Grand Inquest* (1955), p. 139. See also Landis, *Congressional Limits on the Congressional Power of Investigations*, 40 Harv. L. Rev. 153, 179-180, 213.

Dean Erwin N. Griswold of the Harvard Law School, in the course of his distinguished series of lectures on the Fifth Amendment and congressional investigatory power, has declared: [15]

> "In this connection I would like to state my own view that a legislative investigation is improper when its sole or basic purpose is to 'expose' people or to develop evidence for use in criminal prosecutions. We have had chairmen of legislative committees who have announced that that was the purpose of the hearings they were conducting. In my opinion, they have thus demonstrated the impropriety of the exercise of power which they are seeking to carry out, and I would hope that the courts, when properly invoked, would decide that there was no legislative power for such a purpose." [16]

The very idea of congressional committee exposure for the sake of exposure unrelated to a legislative purpose is incompatible with our constitutional system. If the Con-

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[15] Griswold, *The 5th Amendment Today* (1955), p. 48.

[16] In the same vein, Alan Barth, after a careful study of this entire problem, concluded that "it [the investigating power] cannot properly be used to 'expose' individuals and voluntary associations . . ." Barth, *Government By Investigation* (1955), p. 199. Woodrow Wilson's oft-quoted statement—"the informing function of Congress should be preferred even to its legislative function"—is misquoted in this connection. "The view that investigating committees may undertake a generalized program of exposure for the sake of informing the public sometimes appeals for authority to Woodrow Wilson's observation about the informing function of Congress. . . . It should be noted, however, that Wilson was writing not about investigating committees but about discussion and interrogation within the main bodies of Congress. Moreover, he was writing specifically about legislative supervision of executive operations. There is certainly no warrant in what Wilson wrote for use of the investigating power to accomplish . . . exposure of the personal opinions of private citizens." *Id.*, p. 23. "President Wilson did not write in light of the history of events since he wrote; more particularly he did not write of the investigative power of Congress in the context of the First Amendment." *United States* v. *Rumely*, 345 U.S. 41, 44.

gress deems a continuing system of exposing individual Communists is necessary or desirable to combat a present danger and existing legislation is inadequate to provide it, Congress has the authority to provide, prospectively not retroactively, for such disclosures and exposures by law as do not violate the Bill of Rights. *Cf. Internal Security Act of 1950*, 64 Stat. 987, 50 U.S.C. (Supp. V.) 781; *Communist Party* v. *Control Board*, 351 U.S. 115. But Congress has not the constitutional authority to delegate to itself or to a committee the power to define and determine individual wrongdoing by exposing persons to public scorn and retribution.

B. *Petitioner's Questioning Was a Clear Case Of Exposure For Exposure's Sake*

1. *The Committee Asserts the Power, as a Separate and Independent Function Apart From Any Investigation in Aid of Legislation, to Expose Allegedly Subversive Individuals to Public Scorn and Retribution.*

The Committee on Un-American Activities, from its earliest days down to the present, has asserted a separate and independent power of exposure unrelated to a legislative purpose. In the words of Chairman Walter, "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." *U. S. News and World Report*, August 26, 1955, p. 71. Acting on this asserted function, the Committee has sought to identify present and past Communists, list them publicly, disseminate the listings as widely as possible, pronounce clearance or judgment of guilty and procure the application of social or economic sanctions to the guilty.

At the trial, as overwhelming proof that the Committee

had asserted this independent power of exposure, petitioner offered in evidence a series of excerpts from official reports and hearings of the Committee (R. 62-63, 111-163), excerpts from statements on the floor of Congress by the Chairman and members of the Committee in connection with Committee business (R. 63, 164-168) and statements to the press by the Chairman and members of the Committee on Committee business (R. 64, 168-174). The Government conceded by stipulation that all the reports and statements had in fact been made and that the transcriptions were accurate (R. 62, 109-111). The Government, however, objected to the introduction of this evidence on the ground that it was irrelevant to any issue in the case and the District Judge, consistent with his apparent position that petitioner had no right to prove that the Committee's purpose was one of exposure and retribution, sustained the objection (R. 63-64). The defense proffered the evidence as an offer of proof (R. 62-63) and it is in the record available for the examination of this Court.[17] For the convenience of the Court, we have summarized this evidence in Appendix B of this petition.

The majority of the court below stated that this "material is not evidence" (see p. 50, *infra*), but we submit that the minority was clearly correct (p. 63) when it said that, "'by claiming that it had the authority and duty to expose, the Committee implied that it intended to expose" and that "it may be inferred from a person's statement that he intended to do something, that he later actually did it. *Mutual Life Ins. Co. of New York* v. *Hillmon*, 145 U.S. 285, 295; *Shurman* v. *United States*, 219 F. 2d 282, 290, fn. 9 (1955)." What we have here is the unhealthy

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[17] All apart from this offer of proof, however, it appears likely that most or all of the material would have been available to the courts on judicial notice. *Carolene Products Co.* v. *United States*, 323 U. S. 18, 28.

situation of a Congressional Committee making political capital of its exposure activities the length and breadth of the land while its attorneys in court continuously and solemnly proclaim that it had no such end in view. Exposure is the byword everywhere except in the courtroom.

2. *The Committee Itself, By What It Did and What It Did Not Ask Petitioner and By the Information Already Available In Its Files Which It Did Not Even Examine, Demonstrated That The Questions Asked Petitioner Were Solely for the Purpose of Exposure.*

(i) *The Questioning of Petitioner*

Petitioner appeared before the Committee on April 29, 1954. Immediately after perfunctory questions relating to his background were completed, counsel for the Committee launched into the meat of the hearing (R. 73). He read testimony from Donald O. Spencer, in September 1952, concerning petitioner's involvement with the Communist Party and asked petitioner about the Spencer statement (R. 73). Petitioner denied the truth of Spencer's testimony (R. 73-75). Counsel then pressed petitioner concerning Spencer's testimony against him, at which point petitioner made the following statement (R. 75):

> "I am not now nor have I ever been a card-carrying member of the Communist Party. Rumsey was wrong when he said I had recruited him into the party, that I had received his dues, that I paid dues to him and that I used the alias Sam Brown.
>
> "Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings.
>
> "I would like to make it clear that for a period of time from approximately 1942 to 1947 I cooperated with the Communist Party and participated in Com-

munist activities to such a degree that some persons may honestly believe that I was a member of the party.

"I have made contributions upon occasions to Communist causes. I have signed petitions for Communist causes. I attended caucuses at an FE convention at which Communist Party officials were present.

"Since I freely cooperated with the Communist Party I have no motive for making the distinction between cooperation and membership except the simple fact that it is the truth. I never carried a Communist Party card. I never accepted discipline and indeed on several occasions I opposed their position.

"In a special convention held in the summer of 1947 I led the fight for compliance with the Taft-Hartley Act by the FE-CIO International Union. This fight became so bitter that it ended any possibility of future cooperation."

Petitioner was then questioned briefly about the extent of his cooperation with the Party. The Committee did not then or later delve into the mechanics of cooperation within the union between this non-Party labor leader and the Party either during the period of his cooperation with the Party or after the "fight became so bitter that it ended any possibility of future cooperation" (R. 75). The Committee did not ask one further question about the details of the internal fight about compliance with the Taft-Hartley Act to which petitioner referred in his testimony and which surely would have been of great significance to the Committee if it had been considering any legislation in the field of Communist infiltration of trade unions.

The questioning then moved into the Rumsey testimony concerning petitioner's alleged Party membership. Petitioner denied Rumsey's allegations, stating that possibly Rumsey was biased against him because petitioner had caused his expulsion from a union (R. 77-78).

The Chairman then returned to petitioner's participation in Communist Party activities. He did not question petitioner about what was discussed at any meetings; he did not question petitioner about how the Communist Party worked with non-Party labor leaders. He asked, ". . . with *whom* did you participate . . ." in these activities (R. 80)? After this question was answered, Mr. Velde continued in his search for names: "All right. Will you proceed, then, with *others* that you have participated with in Communist Party activity" (R. 80)? Again petitioner answered the question.

After a short recess, counsel returned to the Rumsey testimony and petitioner repeated his earlier testimony (R. 82-84). Then, without interrogating petitioner about his union activities, or about the effect on them of his cooperation with the Communist Party before 1947 and his opposition to it after 1947, the Committee counsel immediately went into wholesale identification (R. 84-85):

> "Mr. Kunzig. Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago, I am asking you first whether you know these people."

Petitioner did not know the first few (R. 85); at the next name, that of Harold Fisher (first count of the indictment), Mr. Kunzig asked whether petitioner knew Fisher to be a member of the Communist Party.[18] Petitioner then made his

[18] With respect to all except two persons, Harold Fisher (Count One) and Ernest DeMaio (Count Four) the questions asked petitioner were about past membership. In the cases of Harold Fisher and Ernest DeMaio questions were couched in the present tense. It seems clear, however, that what the Committee was after was petitioner's knowledge of the past membership of the 29 persons involved. In view of the earlier testimony by Rumsey and Spencer, who set the dates of petitioner's alleged party affiliation from 1943-46 (R. 136-137, 154), and petitioner's own uncontradicted statement that he had ceased any form of cooperation with the

statement, which he had carefully prepared in anticipation of this line of questioning, telling the Committee that he would answer all questions about himself, that he would answer questions about people he knew to be members of the Communist Party and who he believes still are, that he would not answer about people who once had been but no longer were Communist Party members, and that he did not believe the Committee had authority to ask about past political associations and to undertake the public exposure of persons (R. 85-86). The Chairman directed the witness to answer the question, stating that the Committee has authority "to ask you . . . concerning your knowledge of any persons . . . who have been members of the Communist Party . . ." (R. 86). Then counsel went through his prepared list and asked the witness whether he had known each of the named persons to be members of the Communist Party, ending with a question containing a long list of 26 names (count seven of the indictment). Petitioner interrupted his refusals to answer, in accordance with the principle he had announced that he would identify persons he believed still to be members of the Party, and

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Communists in 1947 (R. 75), there can be no doubt that the Committee was questioning petitioner about past political associations. At any rate, if the Committee was seeking information about present membership, petitioner answered the questions. Petitioner stated that he would "answer questions about persons whom I knew to be members of the Communist Party and whom I believe still are" (R. 85), and would only refuse to answer about those who had "long since removed themselves from the Communist movement" (R. 85). Indeed, in implementing this principle, petitioner extracted the name Joseph Stern from a long list of names and answered affirmatively about Stern's present membership. Consequently, when petitioner replied to any question about present membership by standing on his statement, he was in effect denying that he knew the particular individual to be a present member and refusing to answer about past membership. *All petitioner ever refused to do was to answer about past membership of others.* This position was accepted both by the majority opinion below (see p. 43; *infra*) and the minority (see n. 5, p. 53, *infra*).

stated that Joseph Stern, one of the names in the long list of names, had "carried on Communist Party activities in the Quad City area" (R. 90). Counsel did not follow up on this; no attempt was made to obtain relevant information about Joseph Stern's activities in the labor movement.

When counsel had completed his list, and the witness once again had been directed to answer, the Chairman of the Committee said (R. 90-91):

> "It seems very clear to me that the witness has pertinent information concerning Communist Party activities which we are authorized and dutybound to investigate, and that the witness should in the spirit of cooperation with his Government answer those questions.
>
> "However, upon his refusal to answer those questions, there is nothing we can do at the present time to force the witness to answer those questions." [19]

The Committee had before it a witness who had been in the labor movement for 18 years. He admitted that he had cooperated with the Communists for five years; that he had been involved in a bitter internal struggle with them. He was an expert on the actual workings of Communism in the labor movement. He did not claim the Fifth Amendment; he did not refuse to testify; he was not a recalcitrant witness. He was respectful to the Committee and ready to do his duty as a citizen. To the Committee, however, that duty was solely to elaborate publicly on his own involvement with the Communist Party and to identify publicly as members of

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[19] In no way did the Committee or the Committee's counsel indicate, as is usual in a court of law when the immediate relevancy of certain questions is not apparent, that the questions would illuminate or have a bearing on the nature or motivation of a course of conduct or pattern of conduct to be established, which would be relevant to the proceeding. *In no way did the Committee or the Committee's counsel attempt to rebut petitioner's assertion that the Committee was undertaking "the public exposure of persons because of their past activities"* (R. 85).

the Communist Party, 30 people who had already been identified by at least one, and in most instances, two people. The Committee did not want the benefit of petitioner's experiences as they related to Communist techniques in labor unions; it did not want the benefit of petitioner's informed opinion about Communist operations in the labor field. The Committee wanted only that petitioner point the finger publicly at himself and at a group of private persons whom he had known some ten years before. Nothing in the way of ex post facto legislative window-dressing or explanations that the questions petitioner would not answer *could* have had a legislative purpose can stand up against the stark facts of what the Committee wanted to know, and what the Committee was not at all concerned to know. The sole purpose of the questions underlying petitioner's indictment was the public identification and exposure of 30 individuals.

(ii) *The Committee's Prior Knowledge and Failure to Examine Its Own Files.*

Petitioner sought to prove in the trial court that the Committee actually had all the information about himself and the 30 individuals which it attempted to obtain from petitioner and that therefore the Committee's only purpose in forcing him to testify was to publicly expose him and these 30 individuals and was not a bona fide effort to obtain the testimony of the petitioner in aid of a legislative purpose. To this end, petitioner served upon the Clerks of the Committee and of the House of Representatives identical subpoenas calling for all the information in the possession of the Committee relating to the persons named in the questions set out in the indictment. Despite the fact that petitioner made out a prima facie case of exposure by demonstrating that the Committee asserted an independent power of exposure (Appendix B, pp. 66 to 80, *infra.*) and that

the questioning of petitioner itself demonstrated that the Committee was acting under that asserted independent power of exposure here (pp. 21 to 26, *supra*), the District Court nevertheless ruled that the subpoenaed documents were not relevant to the issues in the case. In effect, what the District Court held was that one indicted for contempt of a Committee would not be permitted to prove that the Committee was engaged in exposure rather than in investigation in aid of legislation.

The subpoenas being quashed, petitioner offered to prove in the court below, through the material which was described in the subpoenas, that the Committee "had in its files all the information which it sought to elicit from the defendant about him and each of the other 30 individuals referred to and, in fact, a great deal more such information" (R. 58). In connection with this offer of proof, petitioner submitted the extensive references to these 30 individuals which were to be found in the Committee's public reports and hearings (R. 94-109). While these references were many and varied, they were but a minute part of the total sum of knowledge which the Committee had about the list of names which was read to appellant. According to government counsel, the Clerk of the Committee informed him that the material was so voluminous that it would take three analysts two weeks to assemble it, and a truck to bring it to the courthouse (R. 46-47). If the Committee's purpose was to inform itself, and through itself the Congress, on matters in aid of legislation, it surely had no need to require petitioner to come from his home and place of employment merely to identify and expose individuals about whom the Committee had more information than the petitioner had or was questioned about. The calling and questioning of petitioner publicly under the circumstances of full prior knowledge on the part of the Committee is itself a demonstration that the Com-

mittee was performing its exposure function and not its legislative function in this line of questioning. Taken together with the Committee's asserted power of exposure and its lack of interest or concern in questioning petitioner along any except exposure lines, the demonstration is overwhelming.

The testimony of Committee counsel makes it clear that the Committee had no practice of searching its own files before using compulsory process to obtain information (R. 49-51); his testimony leaves little doubt that this truckload of material was never examined prior to the issuance of the subpoena to petitioner or his testimony at the hearing (R. 49-52). The ironic fact is that, although it boasted of its "comprehensive records" concerning "individuals",[20] and pointed out the effect of their use in arguing for its annual appropriation,[21] the Committee failed to exhaust the possibilities in these files in order to save a citizen the expense and adverse publicity of coming to testify, under compulsory process, about what the Committee already knew. Obviously petitioner was called not to give testimony relevant to a legislative purpose, but to play the role assigned to him by the Committee in its staging of the public identification of individuals.

We do not suggest that the Committee was without authority to obtain adequate corroborative evidence relevant to a legislative matter. Nor do we suggest that the Committee was without authority to compel oral testimony on a legislative matter simply because it already had some information in its files. What we do maintain is that the "truckload" of information in the Committee files concerning petitioner and the persons about whom he was asked and the failure of the Committee to make a thorough review of this truck-

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[20] R. 128, Annual Report for 1949, p. 18.

[21] R. 168, 100 Cong. Rec. 2173.

load of information before calling petitioner is added evidence that the Committee's sole concern was to use petitioner as a vehicle of its policy of public identification. When taken together with the other evidence to this effect, there can be little doubt that the Committee was questioning petitioner solely in aid of its asserted power of exposure.

C. *The Position of the Majority Below*

Petitioner made these arguments on exposure, in greater detail, to the court below. Instead of considering the evidence of exposure presented by petitioner and passing on the issues thus raised, the majority opinion seems to hold (i) that there *could* always be a valid legislative purpose in a Congressional Committee asking witnesses whether certain persons had once been members of the Communist Party and (ii) that, therefore, since there *could* have been a valid legislative purpose, proof that there was in fact no valid legislative purpose in particular questions, but only a purpose to expose, does not invalidate Congressional Committee action. Thus, the majority opinion states (p. 43, *infra*):

> ". . . A majority of the court is of opinion that Congress has power to investigate the history of the Communist Party and to ask the questions Watkins refused to answer. It would be quite in order for Congress to authorize a committee to investigate the rate of growth or decline of the Communist Party, and so its numerical strength at various times, as part of an inquiry into the extent of the menace it poses and the legislative means that may be appropriate for dealing with that menace.[22] Inquiry whether thirty per-

[22] All apart from the fact that this information was already available to the Committee from the Federal Bureau of Investigation's regular yearly reports to the Congress on the membership of the Communist

sons were Communists between 1942 and 1947 would be pertinent to such an investigation. The questions asked Watkins *could* be asked for a valid legislative purpose." (Emphasis supplied.)

Nowhere does the majority opinion deal with the issue whether the questions asked Watkins were in fact asked for a valid legislative purpose; the entire emphasis, as indicated in the quotation above, is that "the questions asked Watkins *could* be asked for a valid legislative purpose." Thus, the majority opinion, after quoting the opening statement of the Chairman of the Committee many weeks before petitioner testified, states that "the purpose of the Committee's hearing was to aid it [the Committee] in its study of a proposed amendment to the Internal Security Act of 1950." [23] Here again the majority opinion is dealing

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Party, the questioning of petitioner itself negatives any such purpose on the part of the Committee. Nowhere did the Committee ask petitioner for the names of other Communists in his union or for any estimate of the total number of Communists. Nowhere was it suggested that the question under inquiry concerned "the history of the Communist Party" or the "rate of growth or decline of the Communist Party." All the Committee wanted was his testimony concerning particular persons whom they desired to expose.

[23] The bill to which the Chairman apparently referred was one to amend the Internal Security Act of 1950 to deprive Communist-infiltrated labor unions of the use of the National Labor Relations Board. The bill pending at the time of the Chairman's statement and of petitioner's appearance was H.R. 7487. No hearings or other action were ever taken on this bill. Subsequently Congressman Reed of Illinois introduced H. J. Res. 528, another bill dealing with Communist-infiltrated labor unions; hearings were held on this bill by the House Judiciary Committee, but an adverse report was filed on the ground that the Committee did not possess sufficient information. H. Rep. No. 2280, 83rd Cong., 2d Sess., p. 3. On July 6, 1954, the Senate Judiciary Committee reported favorably on S. 3706, a bill to provide for hearings on Communist-infiltrated labor organizations. Two days later, on July 8, 1954, two-and-a-half months after petitioner's hearing, Congressman Velde introduced H. R. 9838, a bill identical with S. 3706, and it was this bill which was reported out on August 9, 1954, and enacted on August 24th as part of the Communist Control Act of 1954. As indicated in the body, the evidence in this case makes clear that the questioning of petitioner had

in the realm of what *could be*, not what *was*. The fact that the Chairman of the Committee referred to a proposed amendment to existing legislation in the course of a lengthy, *pro forma* opening speech many weeks (R. 33, 43-44, 70) and many witnesses before petitioner testified, hardly demonstrates that the purpose of the particular questions petitioner refused to answer was to elicit information about this amendment.

In fact the proof is clearly to the contrary. Immediately after the opening statement in Chicago, which made the passing reference to the bill in question (R. 44) upon which the court below relied, the Committee took testimony from six witnesses on the Federal employee security program and various college and farm activities. *Hearing before the Committee on Un-American Activities*, House of Representatives, 83rd Cong., 2d Sess., Investigation of Communist Activities in the Chicago Area—Parts 1 and 2. When petitioner finally testified, no questions were asked him in any way relating to this amendment or any other. When petitioner challenged the Committee's action as one of exposure (R. 86), the answer that came from the Committee was not that the desired testimony was relevant to any bill concerning Communist infiltration into labor unions or otherwise, but simply a veiled and not too subtle assertion of the power of exposure (see pp. 24-25, *supra*). Furthermore, the Committee report on the bill to which the court below refers did not claim there had been any hearings on the bill (H. Rep. No. 2651, 83d Cong., 2d Sess.); the minority report stated categorically that no hearings had been held. H. Rep. 2651, Part 2, 83rd Cong., 2d Sess.[24]

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nothing whatever to do with the bill that was then pending before the Committee or the bill, introduced later, which was finally enacted.

[24] One of the minority who stated that no hearings had been held, Congressman Frazier, was present at petitioner's interrogation (R. 70) and would have been in a position to know if the questioning had been directed in any way at the amendment to the Internal Security Act.

The holding of the court below that the possibility that certain questions *could* have had a valid legislative purpose is sufficient to justify Committee action regardless of proof that there was in fact no valid legislative purpose would render academic and meaningless the authoritative decisions of this Court limiting the investigative power. If the ruling below stands, there will be no limits to the exposure powers of Committees of Congress for *ex post facto* legislative rationalization for any question is always possible. For this Court to close its eyes to the fact that the Committee here acted as part of its asserted independent power of exposure, it "would have to be that 'blind' court against which Mr. Chief Justice Taft had admonished in a famous passage, *Bailey* v. *Drexel Furniture Co.* (Child Labor Tax Case) 259 U. S. 20, 37, that does not see what all 'others can see and understand' . . ." *United States* v. *Rumely*, 345 U. S. 41, 44.[25]

D. *The Position of the Minority Below*

Chief Judge Edgerton and Circuit Judge Bazelon in their opinion, both as the majority of the initial panel and the minority of the full bench, reviewed the evidence pre-

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[25] The majority opinion has created a confused legal situation even in the Circuit covered by its own ruling. On April 19, 1956, District Judge Richmond B. Keech, in acquitting Aldo Icardi of perjury, stated "that if the committee is not pursuing a bona fide legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal,' even though that very testimony be relevant to a matter which *could* be the subject of a valid legislative investigation" (emphasis supplied). *New York Times*, April 20, 1956. In other words, in this Circuit there now appears to be one rule for ex-Communists—namely, that a legislative purpose could always have existed and the courts will say it did exist—and another rule for all other citizens—namely that there must be a legislative purpose by the particular committee in asking the particular questions that form the subject of indictment. See also, *Bowers* v. *United States*, 202 F. 2d 447 (C.A. D.C. 1953), where, in the case of gamblers, the Court of Appeals held that "the presumption or possibility of pertinency will not suffice."

sented by petitioner (pp. 57 to 63, *infra*) and concluded that if "obliged to decide what the Committee's purpose was in asking the questions Watkins would not answer, we might be forced to conclude that the Committee asked them for the sole purpose of exposure" (p. 57, *infra*). The dissenting judges, however, construing the authorization of the Committee narrowly in order to avoid the constitutional issues involved (cf. *United States* v. *Rumely*, 345 U. S. 41), concluded that it was unnecessary to decide the exposure question because the authorization of the Committee, narrowly construed, did not cover the questions petitioner refused to answer (p. 64, *infra*).

Petitioner submits that, whether proof of exposure be deemed a ground for so narrowly construing the resolution as to exclude the questions at which petitioner balked or be deemed a basis for holding the action of the Committee under the resolution beyond the powers of a Congressional Investigatory Committee, a clear-cut case of exposure has been made out here. This Court has referred to the "wide concern, both in and out of Congress, over some aspects of . . . the congressional power of investigation." *United States* v. *Rumely*, 345 U. S. 41, 44. The objectionable aspects of the exercise of Congressional power of investigation can largely be traced to the assertion and exercise of an untrammeled power of exposure. As a further indication of the wide concern over the matter of Congressional power of investigation, this Court, in a dictum in the *Quinn* case, set forth a careful catalogue of restrictions on the power of investigation. 349 U. S. 155, 160-161.

If petitioner's showing of the Committee's purpose of exposure is not deemed adequate, we doubt that it can be made in any case. For the Committee will hardly, in a proceeding likely to end in the courtroom, be more explicit in its unlawful purpose of exposure than it was here. We do not

believe that the "concern" expressed and limitations outlined by this Court were intended to be academic and incapable of proof.

The Committee on Un-American Activities has interpreted its resolution as giving it authority to investigate un-American and subversive activities unrelated to legislation and has delved into every aspect of unorthodox opinion and activity. The Congress has year after year ratified this interpretation. The very breadth of this asserted power calls for the judicially-imposed restraints suggested by the *Rumely* and *Quinn* opinions. Yet, we repeat, if the showing made here is not deemed adequate, there can be no effective judicial limitations in the very field of inquiry where they are most needed.

II

The Decision of the Court of Appeals Denying Petitioner's Right to a Fair and Impartial Grand Jury Raises an Important Question of Federal Law Which Has Been Decided by the Court Below in a Way in Conflict With the Applicable Decisions of This Court

In the trial court, petitioner moved for a dismissal of the indictment on the ground that, by virtue of the fear instilled by the government employees security programs, less than 12 grand jurors were free from bias against him and able to cast their votes impartially, or for a preliminary hearing at which he could prove the essential facts supporting the motion. Petitioner offered, by an affidavit of counsel attached to his motion for dismissal or preliminary hearing (R. 5, 9-10), to make an affirmative showing that the personal bias and fear, which this Court had found absent in *Dennis* v. *United States*, 339 U. S. 162, actually existed on the part of the grand jurors in this case. (The *Dennis* jury was convened three months after the in-

auguration of the loyalty program; the *Watkins* grand jury was convened seven years later). Moreover, the affidavit filed in this case sets forth the fact that, at hearings under the security program, persons under investigation were asked their opinions on the *Hiss, Remington, Coplon* and *Rosenberg* cases and other similar matters which were considered evidence of an attitude sympathetic towards Communism. "If," the affidavit states, "the mere opinions of persons who have not even participated in a case thought to affect the security of the Government are treated by the authorities as relevant to a decision on a security or loyalty status, the grand jurors would recognize that a vote against an indictment in this case would be harmful to their security status" (R. 9-10).[26] Although the Government filed no answering affidavit challenging any of the facts in the affidavit, the District Court denied petitioner's motion (R. 10-11). The Court of Appeals, despite the fact that the question was placed squarely before them by petitioner (Brief for Appellant, pp. 72-74), omitted any reference to this point in its decision.

The refusal of the courts below to dismiss the indictment or grant a preliminary hearing because of grand jury bias created by the government employees security programs raises the identical question upon which this Court granted certiorari, but which it found unnecessary to decide, in *Quinn* v. *United States*, 349 U. S. 155, 170; *Emspak* v. *United States*, 349 U. S. 190, 202, and *Bart* v. *United States*, 349 U. S. 219, 223.[27] Indeed, the affidavit in this case goes con-

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[26] Compare the quoted statement in counsel's affidavit with the statement by the majority in the *Dennis* case, that, "As far as it appears, the court was willing to consider any evidence which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal, but no such proof was made (339 U.S. at 168).

[27] In *Emspak*, the original grant of certiorari (346 U.S. 809) excepted the grand jury question. Upon reargument (see 347 U.S. 1006) the

siderably beyond the offers of proof in *Quinn, Emspak* and *Bart* in that it states facts and affirmatively offers to prove

(i) the net effect of the long operation of the government loyalty-security programs, several more years of highly-publicized and widely-feared operation than in those cases;

(ii) that attitudes of grand jurors in cases involving allegations of communism would be considered relevant by security administrators;

(iii) that there was an actual fear on the part of grand jurors which would prevent the exercise of their free will.

The considerations which underlay the grant of certiorari in the *Quinn, Emspak* and *Bart* cases are thus even more applicable to the petition at bar. See also *Morford* v. *United States*, 339 U. S. 258.[28]

The Government suggested in the courts below that the grand jury bias was not prejudicial because the essence of petitioner's defense at the trial was a "legal justification" rather than a factual denial. Brief of Appellee, p. 18. This is reminiscent of the Government's argument, in opposition to certiorari in *Quinn, Emspak* and *Bart, supra*, that:

"The subtler considerations as to a possible claim of privilege or the meaning of refusal to answer are obviously not the kind of question which a grand jury

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case was consolidated with *Quinn* (see 347 U.S. 1008) and *Bart* (see 347 U.S. 1011), wherein the grant of certiorari included the grand jury point. The *Emspak* grant was thus broadened to include the grand jury question, as indicated by the opinion of Chief Justice Warren in *United States* v. *Emspak*, 349 U.S. 190, at 202.

[28] The fact that the *Morford* and *Dennis* cases involve petit juries is not relevant here. Under the Fifth Amendment, petitioner had a "federal constitutional right to a fair and impartial grand jury" (*Cassell* v. *Texas*, 339 U.S. 282), acting as a "responsible tribunal." *Beavers* v. *Henkel*, 194 U.S. 73, 84. It is at this failure to accord petitioner his right to an impartial and responsible grand jury that petitioner's motion to dismiss and affidavit were directed. See also 2 U.S.C. § 194, requiring grand jury action for the misdemeanor involved in contempt.

would be called upon to decide. There is thus no basis for a claim of prejudice on the grounds alleged."[29]

This argument, apparently unconvincing to this Court in passing upon the petitions for certiorari in the cases in which it was made, disregards the rule that where grand jury selection is likely to result in unfairness, "*reversible error does not depend on a showing of prejudice in an individual case*" because

> "the injury is not limited to this defendant—there is injury to the jury system, to the law as an institution, to the community at large and to the democratic ideal reflected in the processes of our courts." *Ballard* v. *United States*, 329 U.S. 187, 195.

Where the method of selecting grand and petit jurors presents the possibility of bias, this Court has from the first declined to look to the actual effect of the discrimination in the particular case, as long as the defendant was in the class likely to be injured. *Strauder* v. *West Virginia*, 100 U.S. 303; *Ballard* v. *United States*, *supra*; *Cassell* v. *Texas*, *supra*; *Thiel* v. *Southern Pacific*, 328 U.S. 217.[30]

It is no answer to state that a fair grand jury might also have indicted. Procedural due process assures that even a correct result may not be achieved by odious means. As was stated recently in a different but related context: "The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts." *Communist Party*

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[29] Government's Brief in Opposition in *Emspak*, p. 25-26, adopted by reference in its briefs in opposition in *Quinn*, p. 14 and *Bart*, p. 13. The argument was subsequently reduced to its essentials in the Government's brief on the merits in *Quinn*, p. 68, in the assertion that "no grand jury would have failed to return an indictment."

[30] Precisely because the grand jury does not operate by any formal rules and because the accused's right to make a defense before it is sharply curtailed (*United States* v. *Costello*, 350 U.S. 359), the guarantee of uncoerced jurors becomes essential.

v. *Control Board*, 351 U.S. 115, 124. See also *Tumey* v. *Ohio*, 273 U. S. 510, 535.

Unless the Constitutional guarantee of an unbiased grand jury is now to be limited to persons likely to have avoided indictment before a fair grand jury, the Government's argument merits no consideration. But at the very least, so novel and restricted a view of the Fifth Amendment's scope as the Government has espoused in attempting to justify grand juror bias, merits full consideration before this Court.

Conclusion

Petitioner is literally one of thousands who have been subpoenaed before Congressional Committees and directed to confess their former associates. Whatever may have been the legislative justification for this use of the subpoena power at the outset of the cold war, years and years of repetition of questions serving only to identify persons as former Communists can have no purpose other than the exposure and punishment of these individuals. With even less justification state investigating committees have sought to imitate and rival their Congressional mentors. See *Sweezy* v. *New Hampshire*, No. 175, October Term, 1956. The questions presented by petitioner are ripe for decision.

For this reason, as well as the Court's responsibility to protect the integrity of the grand jury system, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,797

JOHN T. WATKINS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

On Rehearing En Banc

Decided April 23, 1956

Mr. Joseph L. Rauh, Jr., with whom *Mrs. Norma Zarky* and *Messrs. Daniel H. Pollitt* and *Sidney S. Sachs* were on the brief, for appellant.

Mr. John D. Lane, Assistant United States Attorney, with whom *Messrs. Leo A. Rover*, United States Attorney, and *Lewis Carroll* and *William Hitz*, Assistant United States Attorneys, were on the brief, for appellee.

Before EDGERTON, Chief Judge, and PRETTYMAN, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER and BASTIAN, Circuit Judges.

BASTIAN, *Circuit Judge*: On May 11, 1954, the House of Representatives voted a contempt citation against appellant and on November 22, 1954, he was indicted under 2 U.S.C. § 192 on seven counts for refusal to answer questions of

a subcommittee of the Committee on Un-American Activities as to whether some twenty-nine or thirty named persons had been members of the Communist Party. Having waived his right to trial by jury, appellant was found guilty in the District Court on all counts. He was fined five hundred dollars; execution of a one-year jail term was suspended and appellant was placed on probation. This appeal followed.

Appellant had been named as a member of the Communist Party for the period 1943-1946 by one Donald O. Spencer, who testified before the Committee in a hearing in Chicago in September 1952. Appellant was identified again as a member of the Communist Party in the early 1940's by one Walter Rumsey, who appeared before the Committee in March 1954.

In his appearance before the Committee, appellant answered questions concerning himself. He admitted cooperating with the Communist Party from 1942 to 1946 and answered concerning the extent of this cooperation. He denied past or present membership in the Communist Party and reiterated these denials specifically with respect to the details of both Spencer's and Rumsey's testimony about him. In the course of this questioning, the following occurred:

[Joint Appendix, at 84, 85]

> "Mr. Kunzig: Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago. I am asking you first whether you know these people. My first question: Warner Betterson?"

Watkins said he did not know the first three persons named. Then he was asked about a Harold Fisher, whom he knew, and the following ensued [*id.* at 85, 86]:

"Mr. Watkins: Mr. Chairman, in regard to that question, I would like to make a very brief statement I prepared in anticipation of this answer.

"Mr. Velde: You may proceed.

"Mr. Watkins: Thank you. I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party *and whom I believe still are.* I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity *but who to my best knowledge and belief have long since removed themselves from the Communist movement.*

"I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates.

"Mr. Kunzig: And I want to get this clear for the record. You are not in any way raising the fifth amendment?

"Mr. Watkins: I am not.

"Mr. Kunzig: But you are refusing to answer the question I have just asked you?

"Mr. Watkins: Based upon the statement just read, yes.

"Mr. Kunzig: And you, of course, have advice of counsel. He is sitting right next to you at this moment and you just conferred with him, is that correct?

"Mr. Watkins: That is correct.

"Mr. Scherer: Mr. Chairman, I ask that you direct the witness to answer.

"Mr. Velde: Yes. *This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation.*

"The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Representatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel.

"Now, do you remember the question that was propounded to you?

"Mr. Watkins: I remember the question, Mr. Chairman, and I have read my answer which, among other things, states that your committee may have this power, and I stand on my statement."

[Emphasis supplied.]

Similar refusals and directions to answer followed and, like those previously described in appellant's testimony with regard to Fisher, they became the subject of the

various counts of the indictment. In all, appellant refused to answer, although directed to do so, with respect to approximately thirty persons.

Appellant argues that the trial court erred in failing to grant his motion to dismiss the indictment or for acquittal. He says the Committee was exceeding its constitutional powers as a congressional investigating committee; that 2 U.S.C. § 192, read together with the Committee's authorizing resolution, was so vague and indefinite as to deprive appellant of due process of law; and that the First Amendment protected appellant against being forced to answer the particular questions asked him.

We must delimit the question before us. A majority of the court is of opinion that Congress has power to investigate the history of the Communist Party and to ask the questions Watkins refused to answer. It would be quite in order for Congress to authorize a committee to investigate the rate of growth or decline of the Communist Party, and so its numerical strength at various times, as part of an inquiry into the extent of the menace it poses and the legislative means that may be appropriate for dealing with that menace. Inquiry whether thirty persons were Communists between 1942 and 1947 would be pertinent to such an investigation. The questions asked Watkins could be asked for a valid legislative purpose.

The precise question upon which the decision must rest is a narrow one. It is whether the Act authorized the Committee to ask the questions asked Watkins, in the particular context in which the Committee propounded them, and whether the Committtee's purpose in asking the questions was a valid legislative purpose. A majority of the court is of opinion that the questions were pertinent to a valid legislative purpose and were authorized by the Act.

According to the Legislative Reorganization Act of 1946

(60 Stat. 812, at 822, 823),[1] the Committee on Un-American Activities is one of several standing committees elected by the House of Representatives. The act sets forth in no uncertain terms the subject and scope of inquiry intrusted to this Committee. It provides [*id.* at 828]:

> "(A) Un-American activities.
>
> "(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

In March 1954, the Committee conducted hearings in Chicago. At their commencement the chairman expressed the purpose of the hearings. It was to investigate, for a definite legislative purpose, communist infiltration into labor unions. The chairman stated [Joint Appendix, at 43, 44]:

> "Mr. Velde: The committee will be in order. I should like to make an opening statement regarding our work here in the city of Chicago. The Congress of the United States, realizing that there are individuals and elements in this country whose aim it is to subvert our constitutional form of government, has established the House Committee on Un-American Activities. In establishing this committee, the Congress

[1] See H. R. Res. No. 5, 83d Cong., 1st Sess. (1953) adopting provisions of the Legislative Reorganization Act as rules of the 83d Congress.

has directed that we must investigate and hold hearings, either by the full committee or by a subcommittee, to ascertain the extent and success of subversive activities directed against these United States.

"On the basis of these investigations and hearings, the Committee on Un-American Activities reports its findings to the Congress *and makes recommendations from these investigations and hearings for new legislation. As a result of this committee's investigations and hearings, the Internal Security Act of 1950 was enacted.*

"Over the past fifteen years this committee has been in existence, both as a special and permanent committee, it has made forty-seven recommendations to the Congress to insure proper security against subversion. I am proud to be able to state that of these forty-seven recommendations, all but eight have been acted upon in one way or another. Among these recommendations which the Congress has not acted upon are those which provide that witnesses appearing before congressional committees be granted immunity from prosecution on the information they furnish.

"The committee has also recommended that evidence secured from confidential devices be admissible in cases involving the national security. The executive branch of Government has now also asked the Congress for such legislation. A study is now being made of various bills dealing with this matter.

"The Congress has also referred to the House Committee on Un-American Activities a bill which would amend the National Security Act of 1950. This bill, if enacted into law, would provide that the Subversive Activities Control Board should, after suitable hearings and procedures, be empowered to find if

certain labor organizations are in fact Communist-controlled action groups. Following this action, such labor groups would not have available the use of the National Labor Relations Board as they now have under the provisions of the Labor-Management Relations Act of 1947.

"During the first session of this 83rd Congress, the House Un-American Activities Committee has held hearings in Los Angeles and San Francisco, California; Albany and New York City, New York; Philadelphia, Pennsylvania, and Columbus, Ohio. We are here in Chicago, Illinois, realizing that this is the center of the great mid-western area of the United States.

"It cannot be said that subversive infiltration has had a greater nor a lesser success in infiltrating this important area. The hearings today are the culmination of an investigation that has been conducted by the committee's competent staff and is a part of the committee's intention for holding hearings in various parts of the country.

"The committee has found that by conducting its investigations and holding hearings in various parts of the country, it has been able to secure a fuller and more comprehensive picture of subversive efforts throughout our nation. Every witness who has been subpoenaed to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States." [Emphasis supplied.]

Later, in April of the same year, at a continuation of the March hearings, the chairman, upon calling the committee to order, announced, just prior to the swearing of appellant [*id.* at 70]:

"Mr. Velde: The Committee will be in order.

"Let the record show that I have appointed as a subcommittee for the purposes of this hearing Mr. Scherer, Mr. Moulder, Mr. Frazier, and myself as chairman.

"The hearing this morning is a continuation of the hearings which were held in Chicago recently by a subcommittee composed of Mr. Scherer, Mr. Moulder, and myself. At that time two witnesses were unavailable, at least the committee staff were unable to find these two witnesses to issue a subpoena for them. Subsequent to that time I believe that these witnesses have been subpoenaed, so we will proceed, Mr. Counsel, at the present time with the witnesses."

In other words, the purpose of the Committee's hearing was to aid it [the Committee] in its study of a proposed amendment to the Internal Security Act of 1950. That amendment was in fact enacted into law four months after appellant's refusal to testify.[2] It made unavailable to labor unions found to be communist-infiltrated procedures established in the Labor-Management Relations Act of 1947. This is a proper example of the exercise of a legitimate legislative purpose.

This court's decision in *Barsky* v. *United States*, 83 U. S. App. D. C. 127, 167 F. 2d 241, cert. denied, 334 U. S. 843 (1948), as well as the decisions in *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), cert. denied, 333 U. S. 838 (1948), and *Dennis* v. *United States*, 339 U.S. 162 (1950), read in the light of *Sinclair* v. *United States*, 279 U.S. 263

[2] The Communist Control Act of 1954 was passed in August 1954 (68 Stat. 775, 50 U.S.C. § 841 (Supp. 1955)). This contained, among other things, amendments to the Internal Security Act of 1950 and had to do, in part at least, with infiltration by communists into labor unions. Other changes having to do with communist infiltration into organizations were also included.

(1929), establishes that the contempt statute, 2 U.S.C. § 192, when read together with the Committee's authorizing resolution is not so vague or indefinite as to be invalid.

With respect to appellant's claimed protection under the First Amendment, we refer to the *Barsky* case, *supra*, where this court indicated that, having power to inquire into the subject of communism and the Communist Party, Congress has the authority to identify individuals who believe in communism and those who belong to the Party, since the nature and scope of the program and activities of the Communist Party depend in large measure on the character and number of its adherents. In *Barsky* we said [167 F. 2d, at 246]:

> "If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. Moreover, the accuracy of the information obtained depends in large part upon the knowledge and the attitude of the witness, whether present before the Committee or represented by the testimony of another. We note at this point that the arguments directed to the invalidity of this inquiry under the First Amendment would apply to an inquiry directed to another person as well as to one directed to the individual himself. . . ."

And at p. 247 we said:

> "Moreover, that the governmental ideology described as Communism and held by the Communist Party is antithetical to the principles which underlie the form of government incorporated in the Federal Constitu-

tion and guaranteed by it to the States, is explicit in the basic documents of the two systems; and the view that the former is a potential menace to the latter is held by sufficiently respectable authorities, both judicial and lay, to justify Congressional inquiry into the subject. In fact, the recitations in the opinion of the Supreme Court in Schneiderman v. United States, 1943, 320 U. S. 118, 63 S. Ct. 1333, 87 L. Ed. 1796, are sufficient to justify inquiry. To remain uninformed upon a subject thus represented would be a failure in Congressional responsibility."

Congress has before it the important duty to legislate effectively, but at the same time wisely, upon the problems posed by the world communist movement. It cannot perform that duty without information. It ought not try to perform it without information. We think the Act authorized an inquiry into infiltration by communists into labor unions and that this inquiry was such an inquiry. The face of the Act seems to us to speak for itself. The inquiry here is likewise plain on its face. It was whether certain persons, members of the union, were indeed communists. The inquiry was specific. It seems to us it was directly part of the inquiry the Committee was directed to make.

Points four and five of appellant's statement of errors can be combined for our purposes here. He says the Committee asserted an independent power of exposure. Congress has power of exposure if the exposure is incident to the exercise of a legislative function. Congress certainly has the power of inquiry or of investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The fact that such an inquiry or investigation may reveal something or "expose" something

is incidental and without effect upon the validity of the inquiry.

Appellant would have us judge the present controversy upon the basis of speeches made by members of Congress and others, and upon newspaper articles, etc. We cannot do so. Such material is not evidence. The question is an individual one, whether the inquiry is indeed pertinent to a valid legislative purpose. It cannot be solved by generalities culled from speeches—many of them no doubt partially extemporaneous—or from partisan assailants, critics, friends or defenders of some project or cause. Moreover, even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry. We must judge each inquiry in its own setting and upon its own facts.

Appellant cites many authorities, beginning with *Kilbourn* v. *Thompson*, 103 U. S. 168, to the effect that Congress does not possess the general power of making inquiry into the private affairs of citizens. This point needs no additional exploration. The inquiry here had to do with a valid legislative purpose.

In *Young* v. *United States*, 212 F. 2d 236, cert. denied, 347 U. S. 1013 (1954), this court pointed out that a committee, holding a hearing to substantiate an earlier report pertinent to legislation pending before the Congress, was engaged in a legislative function and its competency was not subject to question in a subsequent prosecution. Further in that case we indicated that this legislative purpose for which the subcommittee had convened was not vitiated by the incidental desire of the subcommittee to give interested parties a chance to reply to statements made in such report.

Having volunteered an attack on the credibility of a prior witness, appellant could not later refuse to answer

questions concerning Communist Party membership of other union associates of appellant and of the prior witness on the ground that this particular phase of testimony was beyond the scope of the Committee's investigating power. Indeed, an inquiry may not only be detailed when credibility is involved but "a legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." Cf. *Townsend* v. *United States*, 68 App. D. C. 223, 95 F. 2d 352, cert. denied, 303 U. S. 664 (1938).

We have examined appellant's other points urged on this appeal and find no error.

The judgment of the District Court is

Affirmed.

Circuit Judge Burger, who took office after the hearing and consideration of this case, took no part in its decision.

EDGERTON, *Chief Judge*, with whom BAZELON, *Circuit Judge*, joins, *dissenting*:[3] The appellant has been convicted of refusing to answer certain questions before a subcommittee[4] of the Committee of the House of Representatives on Un-American Activities. He told the Committee he had cooperated with the Communist Party from 1942 to 1947. He did not plead the Fifth Amendment. Asked whether he knew certains persons as Communists, he answered freely concerning all whom he believed to be Communists at the time of the hearing. He refused to answer concerning other persons. As the District Court said in sentencing him, he did not "attempt to impede the committee in any respect, other than his refusal to answer questions dealing

[3] This opinion is nearly identical with one which, as the majority of a division of the court, we filed January 26, 1956, and which was superseded when a rehearing *in banc* was ordered.

[4] We shall call the subcommittee the Committee.

with persons who, to use his words, 'may in the past have been Communist Party members or otherwise engaged in Communist activities, but who to my best knowledge and belief have long since removed themselves from the Communist movement.'" We have to decide whether his refusal to expose their past history was a crime.

Since 1953 he has been a United Automobile Workers organizer. From 1935 to 1953 he was employed by the International Harvester Company at East Moline, Illinois, but from 1942 to 1953 he was on leave and worked for the Farm Equipment Workers, CIO, and its successor. At a hearing of the Committee in 1952, one Spencer named him as having been a member of the Communist Party between 1943 and 1946. At a hearing of the Committee in Chicago in March 1954, one Rumsey testified that in 1942 or 1943 Watkins recruited him into the Party and collected his Party dues.

In April 1954, in response to a subpoena, Watkins appeared and testified before the Committee in Washington. He said: "I am not now nor have I ever been a card-carrying member of the Communist Party. Rumsey was wrong when he said I had recruited him into the party, that I had received his dues . . . Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings.

"I would like to make it clear that for a period of time from approximately 1942 to 1947 I cooperated with the Communist Party and participated in Communist activities to such a degree that some persons may honestly believe that I was a member of the Party. I have made contributions upon occasions to Communist causes. I have signed petitions for Communist causes. I attended caucuses at an FE convention at which Communist Party officials were present. Since I freely cooperated with the

Communist Party I have no motive for making the distinction between cooperation and membership except the simple fact that it is the truth. I never carried a Communist Party card. I never accepted discipline and indeed on several occasions I opposed their position.

"In a special convention held in the summer of 1947 I led the fight for compliance with the Taft-Hartley Act by the FE-CIO International Union. This fight became so bitter that it ended any possibility of future cooperation."

He was asked: ". . . with whom did you participate in the Communist Party in [its] activities . . . ?" He named several people. Mr. Kunzig, Committee counsel, said: "Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago. I am asking you first whether you know these people." He did not know the first three. He knew the fourth, who was Spencer, and the fifth, one Harold Fisher. He was asked, "Do you know Harold Fisher to be a member of the Communist Party?"[5] He consulted his counsel and then read this statement to the Committee: "I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper

[5] As to all except Fisher and one other, the Committee's questions were expressly about past Party membership. As to those two persons, the questions were phrased in the present tense. But in view of the earlier testimony of Rumsey and Spencer, who set the dates of appellant's Party affiliation from 1943-46, and appellant's uncontradicted statement that he had ceased cooperation with the Party in 1947, it is plain that the Committee was questioning appellant about the past. He did not refuse to testify about the present. His statement which we proceed to quote shows that when he replied to a question about present membership by standing on the statement, he was in effect denying that he knew the named individual to be a present member of the Party and refusing to answer about past membership.

scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and who I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communits Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.

"I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates."

After testifying that Joseph Stern, one of the men on the Committee's list, had carried on Party activities, he said: "In regard to the other names that you have read, I will not answer, based upon the statement that I read into the record. . . ." The Committee directed him to answer. He refused again. The Committee did not question him further.

He was indicted in November 1954 and tried in May 1955. He waived a jury. The government called only one witness, the Committee counsel, who put into the record the transcript of the Committee's examination of Watkins. The court found Watkins guilty, fined him $500, sentenced him to a year's imprisonment, suspended the sentence, and placed him on probation.

I

The Committee on Un-American Activities is a standing committee of the House of Representatives. The Committee and its subcommittees are authorized by Act of Congress "to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." 60 Stat. 812, 823, 828.

A witness before a congressional committee is guilty of a misdemeanor if he "refuses to answer any question pertinent to the question under inquiry . . . ." 2 U.S.C. §192, R.S. §102, 52 Stat. 942, as amended. Pertinence is part of the government's case. In order to convict, the government must plead and prove that the questions the witness would not answer were pertinent to an inquiry Congress had authorized. *Sinclair* v. *United States*, 279 U.S. 263, 296-297. *Bowers* v. *United States*, 92 U.S. App. D.C. 79, 80, 202 F. 2d 447, 448; *Keeney* v. *United States*, 94 U.S. App. D.C. 366, 369, 218 F. 2d 843, 845.

An important preliminary question is whether the authorizing Act is to be construed broadly or narrowly for the purpose of deciding whether the questions Watkins would not answer were pertinent to the inquiry authorized. The Act must be construed narrowly if a narrow construction avoids a serious constitutional question. *United States* v. *Rumely*, 345 U.S. 41.

If the questions Watkins would not answer were pertinent to the inquiry authorized by the Act, we should have

to decide whether they were within the constitutional power of Congress. Like the question in the *Rumely* case, this question is serious, as we shall presently show. It follows that, for the purposes of this case, the Act must be construed narrowly if the questions Watkins refused to answer would otherwise appear pertinent.

"There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power . . . is indeed co-extensive with the power to legislate. . . . *It cannot be used to inquire into private affairs unrelated to a valid legislative purpose.* Nor does it extend to an area in which Congress is forbidden to legislate. Similarly, the *power to investigate must not be confused with any of the powers of law enforcement;* those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination . . ." *Quinn* v. *United States*, 349 U.S. 155, 160, 161 (1955). (Emphasis added.)

The only limitation dealt with in the *Quinn* case was the privilege against self-incrimination. The fact that the Supreme Court called attention to other limitations, including the necessity of a "valid legislative purpose", suggests that the Court shares the "wide concern, both in and out of Congress, over some aspects of the exercise of the congressional power of investigation." *United States* v. *Rumely*, 345 U.S. 41, 44.

It is very questionable whether exposure of individuals to public contempt or hostility is a "valid legislative purpose". Since Congress has "no powers of law enforcement" it would have no power, in the absence of a valid

legislative purpose, to expose former Communists, even if there were a law requiring that former Communists be exposed. If we were obliged to decide what the Committee's purpose was in asking the questions Watkins would not answer, we might be forced to conclude that the Committee asked them for the sole purpose of exposure.

By "exposure" we mean injurious publicity. The fact that Rumsey, at Chicago in March, publicly called Fisher a Communist, does not mean that if Watkins had done so at Washington in April, this new publicity and its repetition in and out of the press would not have been injurious. Obviously the new publicity would have been injurious. As the law of slander and libel recognizes, the fact that a derogatory statement has been made previously does not make it harmless. And the fact that Rumsey had called Fisher a Communist does not show that the Committee sought to serve some other purpose than injurious publicity when it asked Watkins "Do you know Harold Fisher to be a member of the Community Party?"

II

The government argues that the Committee's purpose in asking the questions was to investigate Communist infiltration of labor unions, in order to determine the need for pending legislation to deprive Communist-infiltrated unions of the use of the National Labor Relations Board.[6]

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[6] In opening the hearing in Washington at which Watkins testified, on April 29, 1954, the chairman said nothing directly about purpose. He said: "The hearing this morning is a continuation of the hearings which were held in Chicago recently . . . ." In opening the Chicago hearings, in March 1954, the chairman said Congress had directed the Committee "to ascertain the extent and success of subversive activities directed against these United States", and mentioned bills of two sorts as pending before the Committee, one of which would make evidence "secured from confidential devices" admissible in "cases involving the

But several aspects of the Committee's examination of Watkins tend to show that the Committee did not ask these questions for that purpose, or for any purpose except exposure.

(1) The Committee made no attempt to learn from Watkins either the total number of Communists in his union, or what positions Communists held in the union, or whether or how, or how far, or in what direction, they influenced the union. The Committee showed no interest in anything but a list of names. Whether Communist infiltration of unions creates a need for legislation would seem to depend on the number, and the nature, extent, and effectiveness of the activities, of Communists in unions. Watkins named several people, who apparently had been fellow-members of his union, as having been Communists while he cooperated with the Party. If the Committee had been questioning him for a legislative purpose, it could hardly have failed to question him about what, if anything, these Communist members of the union did.

(2) It is not clear, and the government does not suggest, how the questions Watkins would not answer could have served the purpose the government now attributes to the Committee.

These questions concerned the presence of Communists in a union between 1942 and 1947. Their presence or absence in unions then had little or nothing to do with the question whether, at the time of the Committee hearing in 1954, Communists in unions were so numerous, so active, and so effective as to create problems that called for legis-

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national security". Another, he said, "would provide that the Subversive Activities Control Board should, after suitable hearings and procedures, be empowered to find if certain labor organizations are in fact Communist-controlled action groups. Following this action, such labor groups would not have available the use of the National Labor Relations Board as they now have under the provisions of the Labor-Management Relations Act of 1947."

lation. This is true partly because of the lapse of time, but chiefly because times had changed and legislation had changed.

Communist affiliation between 1942 and 1947 did not mean what Communist affiliation meant in 1954. In December 1941 the United States joined Russia in the war against Germany. President Roosevelt wrote to Admiral Land in January 1942: "I am still terribly disturbed about the fact that an adequate number of ships are not available for Russia. . . . This Government has made a firm pledge to Russia and we simply cannot go back on it." In February 1942 General MacArthur honored the 25th anniversary of the Red Army with a message in which he said: ". . . the hopes of civilization rest upon the worthy banners of the courageous Russian Army. . . ."[7] Friendly relations between the United States and Russia continued throughout the war and did not cease immediately at the end of the war.

The Labor Management Relations Act, which requires non-Communist affidavits from officers of unions that use the National Labor Relations Board, was not passed until 1947, close to the end of the period to which the Committee's questions relate. Whether the Act is adequate or requires strengthening would seem to depend upon what has happened since, not what had already happened. Likewise the Internal Security Act and the Immigration and Nationality Act, passed in 1950 and 1952, were in effect at the time of the Committee hearing but not at the time to which the Committee's questions relate.[8]

(3) When Watkins refused to answer the Committee's

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[7] Quoted in Robert E. Sherwood, ROOSEVELT AND HOPKINS, p. 496, 497 (1948).

[8] 64 Stat. 987; 66 Stat. 163. The Communist Control Act of 1954 is not pertinent in this connection, since it was passed in August 1954, after the Committee hearing. 68 Stat. 775.

questions, saying he thought their purpose was "public exposure of persons because of their past activities", the Committee was under no obligation to reply. However, the chairman chose to reply. His reply did not suggest that the questions had a legislative purpose related to unions. It did not mention unions. Instead, it claimed for the Committee unlimited authority to question Watkins concerning his knowledge of former Communists. The chairman said: "This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation. The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Representatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel."

(4) The Committee seems to have had in its possession, before it questioned Watkins, the information about other persons which it asked him to supply.[9]

(5) The purpose the government attributes to the Committee, and practically any other purpose except exposure, might have been served by questioning Watkins in a closed session. But the Committee questioned him at a public hearing.

III

Words and conduct of the Committee on other occasions go far to confirm the inference that its purpose on this occasion was exposure.

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[9] *Cf. Slochower* v. *Board of Education*, — U.S. —, decided April 9, 1956 (slip opinion p. 7.)

"The Committee and its members have repeatedly said in terms or in effect that its main purpose is to do by exposure and publicity what it believes may not validly be done by legislation." [10]

At the trial, the defense offered in evidence "excerpts from House committee reports, House committee hearings, Congressional Record statements and newspapers, going to the point that the House committee asserts an independent power all apart from legislation to expose persons to public knowledge." The court excluded these excerpts as evidence, but they are in the record as an offer of proof. They cover some 64 printed pages.[11] They show beyond doubt, and it is not disputed, that the Committee on Un-American Activities claims an independent power of exposure and sometimes investigates for the purpose of exposure. We give a few illustrations.

Mr. Dies, the first chairman of the Committee, said during debate in the House on his resolution for the appointment of such a Committee, "I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession." [12]

The Committee said in 1951: "Exposure in a systematic way began with the formation of the House Committee on Un-American Activities, May 26, 1938. . . . The House Committee on Un-American Activities was started on its way May 20, 1938, with instructions from the United States

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[10] Dissenting opinion in *Barsky* v. *United States*, 83 U.S. App. D.C. 127, 142, 167 F. 2d 241, 256. A footnote quotes many such statements.

[11] Counsel stipulated that the excerpts from official sources are accurate and that those from newspapers are "true and correct quotations, digests or reports as the case may be of the statements and events reported therein."

[12] 83 Cong. Rec. 7570 (May 26, 1938). Quoted in ROBERT K. CARR, THE HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES (1952) at p. 15.

House of Representatives to expose people and organizations attempting to destroy this country. That is still its job, and to that job it sticks." [13]

Mr. Velde, the Chairman of the Committee in the 83d Congress, who presided at the Watkins hearing, said at another hearing: "we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purpose of remedial legislation but to inform the people who elected us about subversive activities. . . ." [14]

Chairman Walter said in 1955: "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." [15]

The Committee has publicized the names of persons identified to it as Communists or former Communists. Its Report for 1952 devotes 54 out of a total of 89 pages to the names and addresses of such persons. Its Report for 1953 devotes 59 out of 193 pages to a similar list.

Though the Committee's Report for 1954, the year of the Watkins hearing, does not contain a list of names, it points to exposure as the Committee's function. It says, *e.g.*, that in 1952 the Committee "reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained. . . . During the committee's investigation, it uncovered members of the Communist Party holding influential positions in the school systems of Detroit and other communities. . . . Most of the teachers called have been suspended or permanently removed from their positions. The Committee on Un-

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[13] *100 Things You Should Know About Communism* (1951), 82d Cong., 1st Sess., House Document No. 136, pp. 19, 67.

[14] Hearing Before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st Sess., p. 1106.

[15] U.S. News and World Report, August 26, 1955, p. 71.

American Activities approves of this action . . .".[16] In a separate pamphlet issued in 1954 the Committee said: "This committee and the special committee have over the past 16 years held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts."[17]

The District Court ruled that express claims of an independent power of exposure, made without particular referance to the Watkins hearing, do not tend to prove that the Committee's purpose in the Watkins hearing was exposure. In our opinion this was error. Although general propositions do not decide concrete cases, they help to decide them. Intentions tend to result in acts. By claiming that it had the authority and duty to expose, the Committee implied that it intended to expose. And as the Fifth Circuit recently said, "of course it may be inferred from a person's statement that he intended to do something, that he later actually did it. Mutual Life Ins. Co. of New York v. Hillmon, 145 U.S. 285, 295, 12 S. Ct. 909, 36 L. Ed. 706." *Shurman* v. *United States*, 219 F. 2d 282, 290, fn. 9 (1955).[18]

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[16] Committee on Un-American Activities, Annual Report for the Year 1954, pp. 14-15, 17.

[17] *This is YOUR House Committee on Un-American Activities*, p. 25.

[18] *Morford* v. *United States*, 85 U.S. App. D.C. 172, 176 F. 2d 54, *reversed* on other grounds, 339 U.S. 258, is not to the contrary. Morford refused to give the Committee on Un-American Activities the financial records, and the names of the publications comm'tee, of the National Council of American-Soviet Friendship, which had put out "a flood of propaganda . . . of the nature described in the Resolution". Unlike this case, the Committee's questions were clearly pertinent to its authorized investigation and nothing in its examination of the witness suggested that it did not ask the questions for that purpose. The presumption of a legislative purpose, which resulted, "cannot be rebutted by impugning the motives of individual members of the Committee." 85 U.S. App. D.C. at 176, 176 F. 2d at 58. No one's motives are impugned by showing the Committee's concept of its duty.

IV

In our opinion the questions Watkins refused to answer are not pertinent to the inquiry authorized by the Act, even if the Act is not construed narrowly. If it is construed narrowly, the questions are clearly not pertinent.

The key words of the Act are (i) "extent, character and objects of un-American propaganda activities"; (ii) "diffusion . . . of subversive and un-American propaganda"; and (iii) "questions in relation thereto that would aid Congress in any necessary remedial legislation." The questions do not relate in any clear or direct way to the extent, the character, the objects, or the diffusion, of any propaganda, subversive and un-American or otherwise. The government has not shown that in asking these questions the Committee was seeking, even indirectly, information about the extent or character or objects or diffusion of propaganda. It has not shown that Watkins, or his union, or the persons about whom the Committee inquired, engaged in propaganda, or that the Committee sought to learn whether they did.

As to clause (iii) of the Act: possibly questions concerning Communist Party membership might be considered "questions in relation" to the "extent, character and objects" or the "diffusion" of propaganda, if the phrase "in relation" were construed very broadly, but these questions certainly cannot be so considered if the phrase is construed narrowly. Moreover, clause (iii) contains the further requirement that the questions "would aid Congress in any necessary remedial legislation". If a mere theoretical chance of very slight aid were to be considered sufficient, possibly it might be thought that the questions "would aid". But that would be a broad construction of those words. Construed narrowly, the words require more than a theoretical chance. The questions Watkins would not answer plainly do not meet this requirement.

"The United States suggests that the presumption of regularity is sufficient without proof. But, without determining whether that presumption is applicable to such a matter, it is enough to say that the stronger presumption of innocence attended the accused at the trial." *Sinclair* v. *United States*, 279 U.S. 263, 296. We conclude that the government failed to show, either beyond a reasonable doubt or even by a preponderance of the evidence, that the questions Watkins would not answer were pertinent to any investigation the Committee was authorized to make.

Barsky v. *United States*, 83 U. S. App. D. C. 127, 167 F. 2d 241, is not to the contrary. The court held that, in the circumstances of that case, Congress and the Committee on Un-American Activities had "power to make an inquiry of an individual which may elicit the answer that the witness is a believer in Communism or a member of the Communist Party." 83 U. S. App. D. C. at 136, 167 F. 2d at 250. But the circumstances of that case and of this are very different. (1) As the court pointed out, Barsky and his co-defendants "were not asked to state their political opinions. They were asked to account for funds." 83 U. S. App. D. C. at 130, 167 F. 2d at 244. (2) As the court pointed out, the Congressional Committee had been informed that Barsky's organization, the Joint Anti-Fascist Refugee Committee, was engaged in "political propaganda." 83 U. S. App. D. C. at 129, 167 F. 2d at 243. It has not been shown that the Congressional Committee had any comparable information in this case. (3) The question Barsky refused to answer related, though indirectly, to his *present* Communist membership. The questions Watkins refused to answer related to Communist membership of other persons at a time long past. To hold, as *Barsky* does, that the Committee may inquire whether members of an organization shown to engage in propaganda are now Communists, does not imply that it may inquire whether members of

a union not shown to engage, or to be likely to engage, in propaganda were once Communists.[19]

We need not consider appellant's other contentions.

APPENDIX B

The Committee on Un-American Activities Asserts the Power, as a Separate and Independent Function Apart From Investigation in Aid of Legislation, to Expose Allegedly Subversive Individuals to Public Scorn and Retribution.

1. *Exposure*

As the Committee itself proudly states, "exposure in a systematic way began with the formation of the House Committee on Un-American Activities, May 26, 1938." This Committee, again in its own words, "was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job and to that job it sticks" (R. 130, 131, *100 Things You Should Know About Communism* (1951), 82d Cong., 1st Sess., House Document No. 136, pp. 19, 67). These statements by the House Committee, made in a pamphlet especially designed for public distribution and

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[19] In *Lawson* v. *United States*, 85 U.S. App. D.C. 167, 176 F. 2d 49, the Committee asked each of two "prominent writers" in the motion picture industry "whether or not he was or had ever been a member of the Communist Party". Though this question included past as well as present membership, neither the briefs nor the opinion of the court show consideration of the fact. The court's ruling, as expressed, is limited to questions regarding *present* membership: "we expressly hold herein that the House Committee on Un-American Activities, or a properly appointed subcommittee thereof, has the *power* to inquire whether a witness subpoenaed by it is or is not a member of the Communist Party or a believer in Communism . . . ." The court held that since motion pictures "are, or are capable of being, a potent medium of propaganda dissemination", the question was pertinent. 85 U.S. App. D.C. at 170, 171, 176 F. 2d at 52, 53.

distributed in more than a million copies,[1] accurately reflect the view of its own power and functions which the Committee has taken. Identification, the listing of individuals, the passing of a judgment of guilt or innocence without regard to any statutory period of limitation and without regard to any preexisting law, the attempt at sanctions, in short, exposure—all directed toward the public, rather than toward the House to which it is an appendage—have been a coordinate part of the Committee's work.

The Chairman of the Committee on Un-American Activities in the 83rd Congress, the Committee which questioned petitioner, described the Committee's function as one to "ferret out Communists" and track "down individual Communists" (R. 169-170), stating:

> "So as a committee of Congress, elected by the people, we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purposes of remedial legislation but to inform the people who elected us about subversive activities" (R. 150).

This asserted independent power to expose had long before been described as a "*special function*" of the Committee—"the discovery and exposure of those enemy groups which fight with non-physical weapons as a fifth column on our home front" (R. 151-152).

Possibly the clearest statement on this subject is that of the present Chairman of the Committee. Defending the Committeee's August, 1955, investigation of Communism in the theatre, Chairman Walter stated: "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware

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[1] Carr, *The House Committee on Un-American Activities* (1952), p. 357.

if possible of the extent of the infiltration of Communism in all phases of our society." *U. S. News and World Report,* August 26, 1955, p. 71.

While at some times and on some occasions the Committee may well have performed a legislative function, it is quite clear that in the proceedings in which petitioner was involved, the Committee was not performing or even attempting to perform a legislative function. It was acting, in the Chairman's words, "unlike most congressional committees." It was asserting, in addition to and completely apart from its legislative functions, a power and duty to find and publicly identify by a "friendly witness" and, if possible, more than one, every past or present Communist, and then to embody that identification in some printed report to be circulated to the American people—that whole system of operation which has come to be called "exposure."

2. *Identification*

The identification of individuals is the first step in this well-organized system of exposure. Here is how the Committee, over the years, and up to and including the Committee in the 83rd Congress, before which petitioner appeared, has openly proclaimed that identification of individuals is what it is looking for.

> "While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate communism, fascism, and nazism, it does have the right to focus the spotlight of publicity upon their activities." (R. 163, H. Rep. No. 2, 76th Cong., 1st Sess., p. 13 (1939)).
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> . . . . . .
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> ". . . Investigation to inform the American people . . . is the real purpose of the House Committee . . . The committee conceives its principal task to have

been the revelation of the attempts now being made by extreme groups in this country to deceive the great mass of earnest and devoted American citizens . . . The purpose of this committee is the task of protecting our constitutional democracy by . . . pitiless publicity. . . ." (R. 163, H. Rep. No. 1476, 76th Cong., 3d Sess., pp. 1, 3, 24 (1940)).

"This committee is the only agency of Government that has the power of exposure. . . . There are many phases of un-American activities that cannot be reached by legislation or administrative action." (R. 163, H. Rep. No. 1, 77th Cong., 1st Sess., 24 (1941)).

"The Committee would like to remind the Congress that its work is part of an 11-year continuity of effort that began with the establishment of a Special Committee on un-American Activities in August 1938. The committee would also like to recall that at no time in those 11 years has it ever wavered from a relentless pursuit and exposure of the Communist fifth column." (R. 128, *Annual Report for 1949*, p. 15).

"The Senate group, Mr. Velde said, is searching for 'organized' communistic activity in the educational system and dealing with institutions. His committee will continue to concentrate upon 'individual members of the Communist Party who in the past and possibly at the present time, are engaged in the field of education'." (R. 169, New York Times, February 12, 1953).

"In an opening statement, Mr. Velde insisted that the investigation was no different from preceding inquiries into labor unions and other areas. He emphasized that the committee was not seeking to investigate institutions as such, but to ferret out Communists operating within them." (R. 169-170, New York TIMES, February 26, 1953).

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"The House Un-American Activities Committee said today it had decided to make no changes in its methods of ferreting out Communists wherever it found them." (R. 170, New York TIMES, May 21, 1953).

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"These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Mich., in 1952. As a matter of fact, in 1952 the committee reported that during its investigation the identity of over 600 individuals as Communist Party members was obtained." (R. 113, *Annual Report for 1954*, pp. 14-15).

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"In this annual report, the committee feels that the Congress and the American people will have a much clearer and fuller picture of the success and scope of communism in the United States by having set forth the names and, where possible, the positions occupied by individuals who have been identified as Communists, or former Communists, during the past year. In the matter of hearings relating to the motion-picture industry and professional groups, the committee

is including those individuals who were named during 1951, inasmuch as these hearings have been of a continuing nature." (R. 120-121, *Annual Report for 1952*, p. 6).

* * * * *

"Mr. Moulder. . . .

"The Committee on Un-American Activities has and will continue to expose communism. It has an excellent record of public service in exposing and warning the American people of the evils of communism, and we must not permit baseless propaganda to injure the work of the committee." (R. 165, 99 Cong. Rec. p. 1983, March 16, 1953).

* * * * *

"Mr. Jackson. . . .

"The work of the House Committee on Un-American Activities is one designed to give the American people a continuing picture of the Communist Party at work; to expose its propaganda efforts, and to inform citizens of organizations and individuals dedicated to the destruction of the American Republic. Its investigations are confidential only to the extent necessary to determine facts. Its hearings are public, open to all informational media, and its millions of publications go directly to the people of this Nation." (R. 165, 99 Cong. Rec. p. 2019, March 17, 1953).

* * * * *

"Mr. Velde. . . .

"No. 1. Demands and requests that an investigation be made of individual Communists in the religious field. To these loyal and sincere citizens, may I say that I

feel Communists should and will be ferreted out and reported to the Congress and to the people, wherever they may be found." (R. 165, 99 Cong. Rec. p. 2130, March 19, 1953).

* * * * *

"Mr. Jackson. Mr. Speaker, during the past 3 years, the Committee on Un-American Activities, of which I am a member, has been conducting an investigation into the extent of Communist infiltration of the Hollywood motion-picture industry. During this period, the committee has exposed several hundred persons who were employed in the motion-picture industry and who were or are members of the Communist Party." (R. 166, 99 Cong. Rec. p. 1371, February 24, 1953).

Identification has been the primary preoccupation of the Committee not only in statements such as those quoted above but also in the actual conduct of its hearings. A comparison of the number of times in the course of its hearings that the Committee has asked the question, "Do you know John Doe to be or have been a member of the Communist Party?", to the number of times it has asked substantive questions demonstrates that the paramount interest and concern of the Committee is in identification. It is conceivable that some years ago, at the beginning of Congressional interest in subversive activities, that identification of Communists in strategic positions pursuing currently or recently a course or pattern of conduct prescribed by the Communist Party might well have had a direct relevance to appropriate legislative inquiry with respect to adherents of the Communist Party, and the need for new legislation or more effective enforcement of existing legislation. But it is inconceivable that some fifteen years of repetition of questions serving only to identify as

Communists—not presently but in years long past—thousands of ordinary individuals all over the country without even attempting to show the nature of their work for the Party in recent years, has any purpose other than the exposure of those individuals.[2]

As part of its identification process, the Committee invites individuals and patriotic organizations to send in the names of suspected Communists.[3]. From these and other sources, the Committee maintains extensive files, which it has variously described from time to time as including: 1,000,000 names,[4] individual files on 3500 leaders of the Communist Party, its front organizations and leaders of Fascist groups,[5] and a collection of lists of signers of Communist Party election petitions, which contain 363,119 signatures.[6]

As far as can be determined, persons are listed in the files prior to formal "identification" by a friendly witness before the Committee. Any information received about

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[2] ". . . the committee has sometimes seemed more interested in exposing allegedly subversive *persons* than it has in exposing subversive *activity*. Admittedly, the committee has many times sought and obtained evidence showing that actual misdeeds have been committed. Its hearings on atomic espionage and on espionage in the government service were certainly concerned with such misdeeds. But all too frequently the committee has been content to put the finger on Communists or fellow travelers while making little or no attempt to demonstrate that they have engaged in any acts of a subversive character." Carr, *op. cit., supra*, p. 454.

[3] R. 125, Annual Report for 1951, p. 5; Statement of Chairman Velde in New York Times, January 28, 1954, R. 171:

> "The House Un-American Activities Committee moved into the picture this afternoon. Its chairman, Harold H. Velde, Illinois Republican, suggested that the VFW supply names of suspected Communists to the Committee as well as to the FBI.
>
> "We welcome the cooperation of such patriotic organizations," he declared.

[4] *Barsky* v. *United States, supra*, dissent by Judge Edgerton, p. 141, note 18; Carr, *op. cit., supra*, p. 253.

[5] R. 129, Annual Report for 1949, p. 19.

[6] R. 127, Annual Report for 1950, p. 41.

"subversive" individuals is apparently sufficient to cause the listing of an individual in the files of the Committee. This is evident from the fact that the Committee has issued "reports" to members of Congress on tens of thousands of persons,[7] but is has only "obtained positive identification of 4151 persons who had been Communist Party members."[8] Moreover, the nature of these public files is evidenced by a typical report issued on Herman F. Reissig, a Protestant minister, which was published in the Congressianl Record.[9] The "so-called" public files of the Committee appear to consist in part of names obtained, without sifting, from a mass of documentary material relating to alleged Communist and front organizations.[10]

The formal public identification takes place in the Committee hearing room, which in recent years and particularly in the 83rd Congress has tended to be in the city in which the individuals to be identified live, and not at the seat of Government (R. 44, 116). The Committee's interest in "identifying" at the place of residence so as to bring maximum public attention to those being identified goes so far that it will sometimes call the same identifying

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[7] R. 119, Annual Report for 1954, p. 133.

[8] R. 130, "This is YOUR House Committee on Un-American Activities," p. 18.

[9] R. 164-165; 100 Cong. Rec. 11589.

[10] Carr. *op. cit. supra,* pp. 253-254: "First, it has been argued that the committee has shown little discretion or responsibility as to the kind of information or material it has allowed to be placed in its files, and second, the committee has been attacked for the irresponsible manner in which it has allowed its files to be used. There is much justification for both criticisms.

"The files are a voluminous mass of miscellaneous, undigested materials and information pertaining to thousands of organizations and perhaps one million individuals. Physically, the file material is of two types: a card index consisting of hundreds of thousands of entries, and a very much smaller number of folders containing exhibits and source materials. A typical card carries the name of a person and makes a brief reference to some activity or organizational affiliation viewed as suspicious or questionable by the research or investigative divisions of the staff."

witness a number of times in a number of different cities so as to achieve this result. See, for example, the appearance of Mrs. Hartle in both Portland and Seattle (R. 113-114, *Annual Report for 1954*, pp. 18-19); the appearance of Bella Dodd and Dorothy K. Funn in New York and Philadelphia (R. 116, *Annual Report for 1953*, pp. 57, 100).

3. *Listing*

Subsequent to the formal identification in a public session of the Committee comes the public listing of the identified individual. The Annual Report of a Standing Committee of the House is generally intended to inform the House of the facts necessary for the latter to exercise its legislative powers; in the case of this Committee, the recent Reports have been largely a compilation of names with no effort to weigh the nature or character of their activities, past or present, or the relevance of the evidence concerning them to any legislative purpose. In the Report for 1953, 59 pages of a total 133 were devoted to listing the names and addresses of individuals who had been named before the Committee as present or former members of the Communist Party. The prior report for 1952 had utilized 54 out of 89 pages for the same purpose.[11]

4. *Dissemination*

The Committee's view of its function and power as being one of exposure to public scorn and retribution appears concretely through its emphasis on dissemination of the lists and identifications which it has gathered. In a recent pamphlet which was intended to describe its operations and silence its critics, the Committee pointed out:

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[11] The Annual Report for 1954, issued March 1955, omitted this personalized listing, possibly in response to the extensive criticism of the Committee on this point. But the emphasis on identification as the Committee's function had not changed. See R. 113, Annual Report for 1954, pp. 14, 17.

> "This committee and the special committee have over the past 16 years held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts" (R. 130, *This is YOUR House Committee on Un-American Activities*, p. 25).

Getting the information to the public is the aim and very heart of the process of exposure. In the course of the series of hearings at which petitioner testified, the Chairman stated:

> "Of course, we have had a great many hearings all throughout the country dealing with the subject of communism and the labor union movement. We have had a lot of our hearings printed, pamphlets, so that members in the Communist-dominated unions should know that we have the information and should be willing to read the information that is furnished free of charge in most instances by the Federal Government." [12]

These statements on the dissemination of information to the public must be read with the constant remembrance that the reports and hearings to which reference is made consist in major part of names, addresses and lists of individuals. It is that type of information which the Committee is desirous of putting into the hands of the public.[13]

5. *Clearance—or Judgment of Guilty*

While the judgment of the guilt or innocence of an individual has traditionally in our Government been the

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[12] R. 149, Hearings, Investigation of Communist Activities in Chicago Area (1954), Part 2, p. 4255.

[13] The Guide to Subversive Organizations, which the Committee publishes in up-to-date form from time to time, is another type of *list* which the Committee distributes wholesale.

function of the Judiciary, and perhaps for limited purposes of quasi-judicial officers of the Executive branch, the determination of individual guilt or innocence of past or present Communist affiliation has been considered by the Committee to be an integral part of its exposure function. It demonstrates this in many ways: in its reiterated invitations to persons and organizations to "deny or explain" testimony given about them;[14] in its issuance to a research organization of an official "clearance"[15] and to a labor union of a finding of not guilty of being a Communist-front organization which reads like a judicial decree;[16] in its

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[14] R. 116, Annual Report for 1953, pp. 60, 99; R. 124, Annual Report for 1951, p. 1.

[15] R. 117, Annual Report for 1953, p. 127; R. 172, New York TIMES, February 7, 1954.

[16] "Upon request of the officers of this union a subcommittee of this committee, on August 17, 1950, heard the testimony of Mr. Martin Wagner, President of the organization. From this evidence the committee finds:

"(1) the UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA has taken energetic and effective measures to eliminate such influence.

"(2) All persons against whom substantial evidence of Communist activities or views exists in the records of the Committee on Un-American Activities, have been removed as officers.

"(3) The charters of local unions found by the parent organization to be following the Communist Party line have been revoked.

"(4) According to a constitutional amendment adopted by the union, no person who is a member of a Communist, Nazi, or Fascist organization may be a member of the executive board or an employee of this union.

"Upon this testimony, the Committee on Un-American Activities has adopted a resolution providing:

"(1) The name of the UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA shall be dropped from future editions of the committee pamphlet '100 Things You Should Know About Communism.'

"(2) No additional copies of the present issue of any committee publication containing reference to this union shall be issued without notation that the statement about the union is no longer true.

"(3) Any statement by any person to the effect that this committee now finds that the UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA under its present officers and bylaws, to be under Communist influence or leadership, is unauthorized and untrue.

"(4) That a copy hereof, over the signature of the committee chairman shall be furnished the union." (R. 131-133, 100 Things You Should Know About Communism, p. 125.)

issuance of a finding that an individual was "not qualified for acceptability to any security position";[17] and in its determination to keep confidential an investigation because the suspected person has died.[18]

But clearance is the exception to the rule. Identification before the Committee automatically establishes the guilt and the guilty one's name is published in the lists of the Committee for all the world to see. This judgment stands unless and until counteracted by what the Committee, sitting as judge, considers as genuine evidence of mistake or repentance; then the Committee will amend its records.[19]

6. *Public Retribution*

The exposure operation would not be complete were not some results obtained from the identification and listing of individuals and the dissemination of their names to the public. No attempt to conceal the hope that some form of social or economic sanction will result from its activities is made by the Committee. Perhaps the most frank statement concerning the object of the Committee's exposure system was made a few months after petitioner's appearance, by Representative Walter, then the ranking Democratic member of the Committee in the 83rd Congress and now its Chairman:

> "Rep. Francis E. Walter (D., Pa.) who will take charge in the new Congress of House activities against communists and their sympathizers, has a new plan for driving Reds out of important industries. He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a

[17] R. 123, Dr. Condon, Annual Report for 1952, p. 74.
[18] R. 126, Agnes Smedley, Annual Report for 1950, p. 4.
[19] R. 129, Annual Report for 1949, p. 46.

chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.

"'By this means,' he said, 'active communists will be exposed before their neighbors and fellow workers, and I have every confidence that the loyal Americans who work with them will do the rest of the job.'"[20]

Industries or institutions which "clean house" to the liking of the Committee are praised;[21] those which do not do so are castigated.[22] Threats of deportation are made when aliens claim the privilege of the Fifth Amendment.[23] Gratification is expressed when those whom the Committee has exposed are released from their employment,[24] or otherwise socially punished[25] as by expulsion from their union.[26] Unions are urged to expose the Communists and seek their prosecution.[27] The Committee has not exhorted in vain; these hoped-for results of social and economic sanctions have been forthcoming for thousands of individuals. Committee trials have in fact resulted in "punishment".[28]

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[20] R. 174, Washington Daily News, November 19, 1954, See also Carr, *op. cit supra* p. 452. "It [the Committee] also had the much more simple goal of driving men from their jobs."

[21] R. 163, Hearings Communist Methods of Infiltration (Education—Part 2), p. 221; R. 121, Annual Report for 1952, pp. 8, 12.

[22] R. 124, 125, Annual Report for 1951, pp. 2, 16.

[23] R. 173, New York TIMES, July 16, 1954.

[24] R. 112, 113, Annual Report for 1954, pp. 7, 17; R 115, Annual Report for 1953, p. 4.

[25] The fact of blacklisting in entire industries is a notorious consequence of exposure. Cogley, *Report on Blacklisting*, Fund for the Republic (1956).

[26] R. 121, Annual Report for 1952, pp. 8, 12.

[27] R. 131, 100 Things You Should Know About Communism, p. 76.

[28] Carr, *op. cit. supra*, p. 452-453.

7. *Conclusion*

"The committee's search for information that might lead to the enactment of laws—either the revision of existing laws dealing with espionage and sedition or the passing of entirely new statutes in this area—has been the slightest of all its interests through the years. Occasionally its interest in checking the work of administrative agencies, particularly that of the Department of Justice, has been substantial. But always its interest in public opinion has been paramount. Always the committee has been concerned lest the American people fail to share its understanding of the nature of subversive activity and the many forms it may take, or appreciate the seriousness of the threat offered by this activity to the 'American way of life' as seen by itself."[29]

[29] Carr, *op. cit. supra*, p. 272.

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No. 261

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY MEMORANDUM OF PETITIONER

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I

Petitioner respectfully submits that nothing in the Brief for the United States in Opposition in any way detracts from the importance of the exposure question presented in the petition for certiorari or demonstrates that the exposure question is not ripe for adjudication in the case at bar.

Far from denying the importance of the exposure question raised by petitioner, the Government declines even "to affirm or deny the existence of a general Congressional

power of 'exposure' unrelated to a particular legislative inquiry". (Br. Opp. p. 19, n. 10).[1] This reticence has not been shared by the Committee on Un-American Activities over the years (Petition pp. 19-21, 66-80), nor by Government counsel in the courts below, nor, on other occasions, in this Court. See, e.g., *Brief for the United States, Emspak v. United States,* No. 67, October Term, 1953, pp. 108-111. Whatever the explanation for this present reticence, it cannot obscure the overriding need for a resolution of this issue, not only for the case at bar but also for the large number of cases involving this and related issues now before the courts and the large number of persons being called before "loyalty-security" investigating committees. See, e.g., *Brief for Robert M. Metcalf, Amicus Curiae,* pp. 4-5.

The Government relies entirely, in opposing certiorari, upon the ground that the questions asked petitioner "were not for the purpose of exposure" (Br. Opp. p. 15), and that "the Committee did have a valid, specific, legislative purpose in questioning petitioner" (Br. Opp. p 14). But nowhere does the Government set forth any but the most superficial answers to petitioner's overwhelming proof of exposure or lend support to its contention of a "valid, specific, legislative purpose in questioning petitioner." We turn first to the Government's answers to petitioner's proof of exposure and then to its contention of a specific legislative purpose.

1. The Government's chief response to petitioner's contention that the Committee has continuously asserted a separate and independent power of exposure unrelated to a legislative purpose appears to be that petitioner's proof of this contention "was made of newspaper reports and statements made by Committee members at various times" (Br. Opp. p. 18). But even a cursory examination of petitioner's Appendix B (Petition pp. 66-80) demonstrates that

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[1] The Brief for the United States in Opposition will be generally designated as "Br. Opp."

proof was made from Committee reports and official statements. And the Government's other answer to petitioner's contention, taken from the majority opinion below, that claims of an unbridled power of exposure "would not establish its use in any particular inquiry" (Br. Opp. p. 18), is unresponsive. Petitioner does not contend that the Committee's assertion of a separate and independent power of exposure unrelated to a legislative purpose in and of itself constitutes adequate proof in the instant case. What is at issue here is the District Court's refusal to consider or even receive this evidence (R. 61). Petitioner's contention, unanswered in the courts below or by the Government here, is that proof of the Committee's assertion of a separate and independent power of exposure should, as the dissenting judges held (Petition p. 63), have been considered by the District Court in determining whether the purpose here was in fact one of exposure. What we are witnessing in the decision below is the principle, unhealthy in a democracy, that legislators may maintain one official position in Congress and another in the courts.

The Government's response to petitioner's carefully-documented argument that what the Committee asked him and what it had failed to ask him demonstrated its purpose of exposure (Petition pp. 21-26, 30-32) appears to be its contention that petitioner "had shown himself to be a recalcitrant witness" (Br. Opp. p. 20). The Government makes this suggestion here for the first time, apparently overlooking the trial judge's direct refutation of any suggestion of recalcitrance (Petition pp. 10-11).

The Government's response to petitioner's argument that the Committee's prior knowledge and its failure to examine its own files evidenced a purpose to expose rather than legislate appears to be its contention that "Congress may conduct hearings to substantiate earlier testimony" (Br. Opp. p. 20). But the right to substantiate earlier testimony, which was expressly conceded in the peti-

tion for certiorari (p. 28), is not the issue here. What the Government has failed to answer is petitioner's argument that the truckload of information in the Committee files concerning petitioner and the persons about whom he was asked and the failure of the Committee to make a review of this truckload of information before calling petitioner was additional evidence that the Committee's sole concern was to use petitioner as a vehicle of its policy of public identification. When taken together with the Committee's asserted power of exposure, its questioning of petitioner, and the Committee's answer to petitioner's challenge to its authority (Petition pp. 24-25), there can be little doubt that the Committee was acting here in aid of its asserted power of exposure.

2. Thus, the Government's effort to answer petitioner's proof of exposure is half-hearted at best. Instead the Government appears to rely principally upon certain factors which, it argues, demonstrate that the Committee did have a specific legislative purpose in questioning petitioner. None of these factors, which we shall now review, support the Government's conclusion.

(i) The Chairman of the Committee, at the opening of the hearing in Chicago, pointed out "that forty-seven recommendations made by the committee had been acted upon by Congress . . ." (Br. Opp. p. 14). But petitioner has never suggested, as appears to have been done in some early broadside attacks upon the authority of the Committee on Un-American Activities, that this Committee was at no time engaged in legislative activities. As stated in the petition, "while at some times and on some occasions the Committee may well have performed a legislative function, it is quite clear that in the proceedings in which petitioner was involved, the Committee was not performing or even attempting a legislative function" (Petition p. 68).

(ii) The Chairman of the Committee also stated that there had been referred to the Committee a bill which

would deny to Communist-controlled unions the benefits of the Labor-Management Relations Act of 1947 and, the Government goes on, "some four months later the bill became law" (Br. Opp. p. 14).[2] But the fact that the Chairman of the Committee made a passing reference to this bill in the course of a lengthy *pro forma* opening speech many weeks and many witnesses before petitioner testified cannot overcome the fact that the questions petitioner was asked in no way related to this bill or to any other (Petition pp. 21-26, 30-32.)[3] And the Committee's failure, for example, to question petitioner about the matter of compliance with the Taft-Hartley Act, after petitioner himself brought this matter before the Committee (R. 75), is particularly significant, for the bill referred to the Committee and relied on by the Government dealt with the same general subject matter of Communist infiltration of labor unions. But, as the dissenting opinion pointed out, what the Committee wanted was the identification of persons who may have been Communists before that time, not whether

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[2] Of course, as pointed out in footnote 23 on page 30 of the petition, the bill referred to by the Chairman never did become law. A bill on the same subject, copied from a Senate bill which had been reported favorably in that body two days earlier, was introduced in the House 2½ months after petitioner's hearing and enacted as part of the Communist Control Act of 1954. As indicated in the petition, the evidence in this case makes clear that the questioning of petitioner had nothing whatever to do with the bill that was then pending before the Committee or the bill, introduced later, which was finally enacted (Petition pp. 21-26, 30-32)

[3] In several places (Br. Opp. pp. 2, 16, 22) the Government seeks to give the Court the impression that the questioning of petitioner must have been related to the pending bill because the persons about whom he was asked were all engaged in union activities. Even if all of the persons about whom petitioner was asked had been engaged in union activities, this would hardly have demonstrated that the Committee was interested in the bill rather than exposure of union personnel. However, the record is clear that many of the persons about whom petitioner was asked were not engaged in any union activities whatever. Theo Kruse, for example, is identified as a "beautician operator"; Olaf Lidel as a watchmaker; Sarah and Murray Levine as "just citizens, but Communists"; John and Marie Wilson, as "man and wife, no official position, just Communists" (R. 144, 148).

the Taft-Hartley Act "is adequate or requires strengthening", which would have been relevant to the proposed bill (Petition p. 59).

(iii) The Government suggests that petitioner's "replies would have provided the basis for further inquiry as to the detailed character of the infiltration" (Br. Opp. p. 16). This suggestion was never made by the Committee, even when petitioner challenged its authority, nor by the Government at the trial or on the appeal below. Furthermore, it is refuted by the Committee's failure to follow up when petitioner did make the requested identification for the Committee (e.g., Joseph Stern, R. 90). What this point does demonstrate is the danger in *ex post facto* rationalization of a legislative purpose, when the Committee, in line with its own assertion of the power of exposure, had no such purpose. See *Bowers* v. *United States*, 202 F. 2d 447, 452 (C.A. D.C. 1953).

(iv) The Government argues, as did the majority below, that petitioner volunteered a direct attack on the credibility of Spencer and Rumsey and that, therefore, he could not refuse to answer any other questions which likewise bore on their credibility, such as whether certain persons named by Rumsey had been members of the Communist Party (Br. Opp. p. 16). But petitioner volunteered nothing. He was subpoenaed to testify at a hearing before the Committee on Un-American Activities. Two earlier witnesses before that same Committee had accused him of being a member of the Communist Party and, rejecting the shield of the Fifth Amendment (R. 85), he intended to testify to the contrary. Because of the risk of perjury inherent in the testimony of two adverse witnesses, he had prepared a careful statement setting forth the facts as he remembered them (R. 37, 39-40, 74-75). After Committee counsel had interrogated petitioner about Spencer's testimony against him, which included Rumsey's participation in Communist activities, and was about to go into Rumsey's testimony (R. 73-77), petitioner read his prepared statement

to the Committee (R. 75). It volunteered nothing; it did not attack the credibility of Rumsey and Spencer other than to deny their testimony concerning petitioner's alleged membership in the Communist Party. Petitioner's efforts to defend himself against a charge of perjury, when being forced to testify under subpoena, is hardly a "voluntary" attack upon the credibility of anyone or a waiver of his right to refuse to proceed further. Furthermore, since the issue here is one of legislative authority and jurisdiction rather than self-incrimination (*Cf. Rogers* v. *United States*, 340 U. S. 367), the question of waiver does not arise. *Cf. United States* v. *Corrick*, 298 U.S. 435; *Minnesota* v. *Northern Securities Co.*, 194 U.S. 48, 62.

(v) The Government contends that, "If the Committee had the additional (and more general) aim of ascertaining the number of Communists at a particular period in our recent history, that, too, would be a valid subject of inquiry . . ." (Br. Opp. p. 17). It is significant that this major point of reliance in the decision below—that Congress *could* have authorized the Committee to investigate the rate of growth or decline of the Communist Party—is introduced by the Government by the word "If". As pointed out in the petition (pp. 29-30), it is perfectly clear that the Committee, in questioning petitioner, was not seeking to ascertain the number of Communists during the 1942-1947 period. Information as to the number of Communists at a particular period was and is available from the Federal Bureau of Investigation's regular reports to the Congress; furthermore, the questioning of petitioner makes it perfectly clear that the Committee was not interested in the history of the Communist Party or its numerical strength at any particular time, but simply in exposing a specific group of persons as Communists (Petition pp. 21-26, 29-32).

(vi) The Government argues that "the Court of Appeals has definitely found that there was a specific and valid legislative objective to the inquiry" (Br. Opp. p. 13). But a reading of the Court's opinion makes clear that its action was predicated on the possibility (what *could* be, not what

was) of a legislative purpose (Petition pp. 29-32). The District Court refused to admit the evidence of exposure which petitioner presented (R. 19, 58, 59, 61). The Court of Appeals, relying upon the mere possibility of a legislative purpose, likewise refused to consider the proof of exposure presented by petitioner. The District Court, by its rejection of the evidence, and the Court of Appeals, by its refusal to consider that evidence, have effectively foreclosed a showing of exposure and an absence of legislative purpose.

(vii) Finally, the Government suggests that ". . . a court cannot go behind the stated purpose of the investigation to delve into some other, or ulterior, motive claimed to exist within the minds of the legislators" (Br. Opp. p. 19).[4] But we submit that this statement errs in equating the absence of a legislative purpose with an ulterior motive. Petitioner asserts that the Committee's purpose was one of exposure and not of legislation; petitioner has demonstrated this purpose through objective facts such as official assertions by the Committee of the power of exposure, the questioning of petitioner, the Committee's answer to petitioner's challenge to its authority, and the failure of the Committee to examine the vast material in its own files. This proof of purpose—the presence of a purpose of exposure and the absence of a legislative purpose—is thus based on objective facts and is entirely separate and apart from any effort to challenge the Committee for an ulterior motive.[5] We do not bring to this Court the case

[4] This argument, of course, presupposes a clearly-stated legislative purpose; here there was only the vague and rambling statement of past activities and generalized intentions (R. 43-44).

[5] We should point out too, in further answer to the suggestion that petitioner is trying to delve into some "ulterior motive claimed to exist within the minds of the legislators" (Br. Opp. p. 19), that it would hardly seem to be proof of an ulterior motive to demonstrate that the Committee was acting in pursuance of its *asserted* separate and independent power of exposure. As the dissenting judges put it: "No one's motives are impugned by showing the Committee's concept of its duty" (Petition p. 63, n. 18).

of a Committee Chairman acting out of bias and prejudice against the witness or the case of one receiving money from a third party. What we do bring to this Court is a case where the objective facts demonstrate that there is no legislative purpose. If the absence of a legislative purpose cannot be proven in this manner, then the doctrine of separation of powers in this field is indeed a nullity and a citizen has no protection against a legislative trial.

* * * * *

Counsel for the *amicus curiae* has quite rightly suggested that the courts must look at the scope and effect of the questions asked petitioner as well as at their purpose and intent (*Brief of Amicus Curiae*, pp. 11-14). We believe the scope and effect of the Committee's action can more effectively be presented in relation to the safeguards of the First Amendment than in relation to the question of legislative-versus-exposure purpose. If the purpose here is one of exposure and not of legislation, the Committee had no power to require answers to its questions and it becomes unnecessary to consider the scope and effect of its action. If, however, this Court should find that the Committee did in fact have a legislative purpose, then a most serious question arises as to whether the First Amendment protects petitioner against forced testimony concerning the Communist Party membership of his past associates (Petition p. 3) and here the vast scope and effect of the Committee's action is compelling. The "accommodation of these contending principles—the one underlying the power of Congress to investigate, the other at the basis of the limitation imposed by the First Amendment" (*United States* v. *Rumely*, 345 U.S. 41, 44) could not have been meant by this Court to be accommodation by surrender of the latter principle to the former. There may, at times, be legislative need sufficient to support wholesale disclosure of the activities or affiliations of citizens in years long past. But no such legislative

need or danger to the Republic sufficient to warrant wholesale disclosure is evident here.

Petitioner argued the constitutional issue of free speech in full in the court below (Brief pp. 62-71), but places primary reliance in this Court, as it has throughout this proceeding, on the exposure-versus-legislative purpose contention. The free speech issue is properly before this Court and will be briefed and argued in full if the petition is granted.[6] *Cf. United States* v. *Rumely*, 345 U.S. 41; *United States* v. *Harriss*, 347 U.S. 612.

II

The Government's argument in opposition to petitioner's contentions concerning the impropriety of the grand jury indictment, presented by cross-reference to its Brief in Opposition in *Ben Gold* v. *United States*, No. 137, is made for the first time in this Court. In the trial court and in the court below, the Government relied principally upon *Dennis* v. *United States*, 339 U.S. 162, and the Court of Appeals decisions following the *Dennis* case.[7] Now, apparently recognizing that petitioner has made the affirmative showing of personal bias and fear found wanting in the *Dennis* case, the Government turns to new fields to support the decision below.

It is not entirely clear from an analysis of the Govern-

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[6] The Government argues that the First Amendment "point does not exist in petitioner's case since he freely testified as to his own past history and general associations" (Br. Opp. p. 22). But this argument overlooks the restraint on speech and association inherent in the public embarrassment of being forced into becoming an "informer". In other words, the restraint on speech and association here is the fear that one might ultimately be forced to become an informer on those with whom he had once banded in the exercise of his rights to freedom of speech.

[7] *Emspak* v. *United States*, 91 U.S. App. D.C. 378, 203 F. 2d 54 (D.C. Cir. 1952), *rev'd on other grounds*, 349 U.S. 190; *Quinn* v. *United States*, 91 U.S. App. D.C. 344, 203 F. 2d 20 (D.C. Cir. 1952), *rev'd on other grounds*, 349 U.S. 155; *Bart* v. *United States*, 91 U.S. App. D.C. 370, 203 F. 2d 45 (D.C. Cir. 1952), *rev'd on other grounds*, 349 U.S. 319.

ment's Brief in Opposition in the *Ben Gold* case (pp. 38-40) whether the Government's present argument is that petitioner is not entitled to *a voir dire* examination of the grand jurors or that petitioner is not entitled to a grand jury in which at least 12 grand jurors concurring in the indictment are free from bias and prejudice against him.

If the Government's argument is limited to the suggestion that petitioner is not entitled to a *voir dire* examination of the grand jurors, it has no application here. Petitioner seeks no such examination. Petitioner, by his counsel's affidavit (R. 5-10), set forth a *prima facie* case of bias and prejudice of a majority of the grand jurors. The Government, relying upon the *Dennis* case and the Court of Appeals decisions following it, failed to file an answering affidavit. Thus the facts set forth in the affidavit for petitioner must be taken as true. No one in this case is contending for a *voir dire* examination of the grand jurors.[8] Petitioner moved for a dismissal of the indictment on the ground that there were less than 12 members of the grand jury concurring in the indictment who were free from prejudice or bias against him "by reason of the facts stated in the affidavit" and, in the alternative, if these facts should be challenged, requested a hearing to give further proof in support of the affidavit (R. 4). This is a far cry from a request for a *voir dire* examination of the grand jurors.

If the Government is suggesting the broader point—that a defendant has no right to a fair and impartial grand jury—its suggestion raises an even more significant issue calling for review by this Court. The Government's implication that the only ground for invalidating grand jury action is the exclusion of the class of which the defendant is a member (*Ben Gold*, Br. Opp. p. 40, n. 21)[9] overlooks the

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[8] We are not entirely clear as to the contentions in the *Ben Gold* case. See Petition for Certiorari, *Ben Gold* v. *United States*, No. 137, October Term, 1956, pp. 22, 32.

[9] The Government states in this same footnote (*Ben Gold*, Br. Opp. p. 40, n. 21) that "It has never been suggested by the Court in any of

fact that in these exclusion cases there is a mere possibility of a biased and prejudiced grand jury, whereas here the unanswered affidavit for petitioner sets forth facts indicating an actually biased and prejudiced grand jury. The basic right "to a fair and impartial grand jury" (*Cassell* v. *Texas*, 339 U.S. 282), acting as a "responsible tribunal" (*Beavers* v. *Henkel*, 194 U.S. 73, 84) has been denied petitioner. The fact that the grand jury process is not surrounded by all the "guarantees historically associated" with the petit jury (*Ben Gold*, Br. Opp. p. 40) does not mean that it is surrounded by none.

Conclusion

It is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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---

these cases that the accused might be *entitled* to have an entire class of persons systematically excluded from the panel—the precise claim petitioner here makes." Whatever may be petitioner's claim in the *Ben Gold* case, the Government's statement does not describe petitioner's claim in this case. Petitioner's claim here is that he is entitled to have 12 members of the grand jury concurring in the indictment free from bias and prejudice against him or, stated in exclusion terms, that he is entitled to the exclusion of biased and prejudiced grand jurors where there are less than 12 members of the grand jury concurring in the indictment free from bias and prejudice against him (R. 4-10). So stated, petitioner's right appears undeniable. It is interesting to note in this connection that under the Federal Rules of Criminal Procedure petitioner is entitled to 12 legally qualified grand jurors concurring in the indictment. Rule 6(b)(2). It could hardly be suggested that he is not entitled to 12 grand jurors free from bias and prejudice.

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No. 261

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The judgment and sentence of the District Court are not reported; they appear on pages 17 and 18 of the record. The majority and dissenting opinions of the Court of Appeals are reported at 233 F. 2d 681 (R. 175, 185).

Jurisdiction

The initial opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit re-

versing the judgment of conviction were entered on January 26, 1956. After rehearing *en banc*, the initial opinion and judgment of the Court of Appeals were reversed on April 23, 1956, and an opinion and judgment were entered affirming the conviction (R. 175, 199). Petitioner's timely petition for rehearing was denied on May 22, 1956 (R. 200). On May 31, 1956, Mr. Chief Justice Warren entered an order extending the time within which a petition for certiorari might be filed until July 20, 1956 (R. 200). The petition for a writ of certiorari was filed on July 19, 1956, and was granted on October 8, 1956 (R. 201). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

Petitioner appeared in response to a subpoena and testified fully before the Committee on Un-American Activities of the House of Representatives concerning his own past activities in the Communist movement. He refused to answer certain questions of the Committee relating to the identification of a number of individuals alleged to have been members of the Communist Party some ten years before. Thereafter he was cited for contempt and convicted of violating 2 U.S.C. § 192 by his refusal to answer. The questions presented are:

1. Does the Committee on Un-American Activities have a separate and distinct power under the Constitution to engage in the exposure of individuals as distinguished from its limited power to engage in such exposure as may be ancillary and incidental to its legislative activities?

2. If the Committee has no such separate and distinct power to engage in the exposure of individuals, was the questioning of petitioner, in the circumstances of this case and in light of the Committee's repeated

assertions of a separate and distinct power of exposure, an exercise of its asserted function of exposure and therefore beyond the constitutional authority of the Committee?

3. Does the First Amendment to the Constitution of the United States protect against forced disclosure of one's past political associations under the circumstances of this case?

4. Is 2 U.S.C. § 192, read together with the authorization of the Committee on Un-American Activities, so vague and indefinite as to violate the due process clause of the Fifth Amendment to the Constitution of the United States?

5. Is a defendant entitled to a dismissal of an indictment or a preliminary hearing thereon when he alleges by motion and affidavit that less than twelve jurors on the grand jury which indicted him were able to exercise an independent judgment by reason of the fear engendered by operation of the government employees security programs, a fear which amounted to actual bias and prejudice against him?

Statutes Involved

2 U.S.C. § 192, R.S. 102 (52 Stat. 942), as amended, provides:

"Refusal of witness to testify.

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any ques-

tion pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 812, 823, 828) provides in relevant part:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"Rule XI

"*Powers & Duties of Committees*

"(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively: . . .

. . . . . .

"(q)(1) Committee on Un-American Activities.

"(A) Un-American activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Statement

John T. Watkins, petitioner herein, resides in Rock Island, Illinois (R. 71). He has been an organizer for the United Automobile Workers since August 1953 (R. 72). Prior to that time he had been employed by other labor organizations (R. 72), including the Farm Equipment Workers; in 1947 he had led the battle against the Communist faction in that union for compliance with the Taft-Hartley Act (R. 75).

Petitioner was named as a member of the Communist Party in the period 1943-1946 by one Donald O. Spencer, who testified before the Committee on Un-American Activities [1] in a hearing in Chicago in September 1952 (R. 73, 154). Petitioner was not called to testify before the Committee at that time.

Petitioner was identified again as a member of the Communist Party in the early 1940s (R. 33-34, 136) when Walter Rumsey appeared before the Committee in March 1954. Thereafter petitioner was subpoenaed to appear, and on April 29, 1954, did appear, before the Committee (R. 70). The Chairman of the Committee opened the session at which petitioner testified with the statement that "the hearing this morning is a continuation of the hearings which were held in Chicago recently. . . ." (R. 70). At these earlier hearings, to which the Chairman referred, he had made a formal opening statement (R. 43-44), describing the Committee's activities and referring generally to various past legislation and pending bills before the Committee.[2]

Prior to his appearance, petitioner had prepared a respectful and courteous written statement that he would tell

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[1] The Committee on Un-American Activities of the House of Representatives will generally be referred to throughout this brief as "the Committee."

[2] The content of this opening statement and its significance, or absence of significance, are discussed fully, *infra* pp. 71-76.

the Committee all about himself but would not inform on past associates no longer connected with the Communist movement (R. 40, 85). He was prepared to, and did, answer all questions about himself. He frankly admitted cooperating with the Communist Party from 1942 to 1947 and willingly answered the few questions put to him about the extent of his cooperation with the Party (R. 75-77). He categorically denied past or present membership in the Communist Party; he reiterated those denials with respect to the details of both Spencer's and Rumsey's testimony about himself (R. 73, 75, 82-84).

Petitioner was entitled to claim the privilege against self-incrimination for all his testimony concerning Communist Party membership, cooperation and associates. *Blau* v. *United States*, 340 U.S. [illegible]; *Emspak* v. *United States*, 349 U.S. 190. But he was as unwilling to use this solution to his problem as he was to inform on past associates. At the appropriate point in the hearing, he read the Committee his prepared statement as follows (R. 85):

> "I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but who to my best knowl-

edge and belief have long since removed themselves from the Communist movement.

"I do not believe that such questions are relevant to the work of this committee *nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities.* I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates." (Emphasis supplied.)

Petitioner adhered to the position taken in his prepared statement in responding to the Committee's questioning. He declined to state whether or not a list of 29 persons, who had been named by Rumsey (and in most instances by Spencer also), had been known by him to be members of the Communist Party; significantly, in the one case where he believed the man still to be a member of the Party, petitioner interrupted this series of questions and answers to respond affirmatively with respect to Joseph Stern, whom he described as "carrying on Communist Party activities" in the Quad City area (R. 90).[3]

The Committee questioned him no further after his refusal to answer concerning the Party membership of the 29 individuals; it evinced no interest in any activities of petitioner jointly with Joseph Stern or the other 29 individuals or otherwise. Once he refused to expose, the Committee dismissed him (R. 91).

On May 11, 1954, the House of Representatives voted a contempt citation against petitioner, and on November 22, 1954, he was indicted under 2 U.S.C. § 192 on seven counts for refusal to answer the Committee's questions as to

[3] Earlier petitioner had identified Gil Green, Fred Fine, and Bill Sentner in line with this same policy (R. 80).

whether the 30[4] named persons had been members of the Communist Party.

Petitioner moved to dismiss the indictment, or for preliminary hearing, on the ground that less than twelve jurors on the grand jury which indicted him were able to exercise an independent judgment by reason of the fear engendered by operation of the government employees security programs, a fear which amounted to actual bias and prejudice against him (R. 4-10). The motion was denied (R. 11).

Prior to trial, on May 16, 1955, petitioner served upon the Clerk of the Committee (and in case he should not have possession, also upon the Clerk of the House of Representatives), identical subpoenas calling for all the information in the possession of the Committee relating to petitioner and the persons named in the questions set out in the indictment (R. 11-14). The Government moved to quash these subpoenas primarily upon the ground that the material sought was irrelevant (R. 15), also asserting that it would take "three research analysts approximately two weeks to assemble the documents sought and would take a truck to bring it to the courthouse" (R. 19, 46).[5] The Dis-

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[4] The indictment contains 31 names (R. 2-3). One of these, however, is a duplicate (Marie Wilson) and another is Joseph Stern about whom petitioner answered.

[5] Petitioner filed counter-motions, requesting the court to rule the documents relevant and material to petitioner's defense and further to request the House of Representatives to permit the inspection and copying of the documents (R. 16). Petitioner's motion took this form because the House of Representatives has traditionally asserted a privilege to refuse access to documents even to the courts. 6 Hinds, *Precedents*, § 587. However, the House will under certain circumstances, after affirmative vote of the House, make documents in its possession available for inspection and copying by a court and the parties. It has been the recent general practice of the House to grant such permission in cases in which the court finds that the documents subpoenaed are relevant and material. See instances cited in the Manual of the House of Representatives (1955) § 291. Petitioner's counter-motions were denied along with the quashing of the subpoenas (R. 19).

trict Court quashed the subpoenas on the ground that the "documents which the subpoena seeks are not relevant to the issues in this case" (R. 19).

Trial by jury was waived and the trial commenced on May 25, 1955 (R. 18). The Government called only Mr. Kunzig, who had been counsel for the Committee at the time petitioner testified. Mr. Kunzig read for the record the transcript of petitioner's appearance before the Committee and testified as to certain aspects of Committee procedure. On cross-examination, counsel for petitioner read to Mr. Kunzig the Government's statement in its motion to quash the subpoenas that "it would take three research analysts approximately two weeks to assemble the documents sought [i.e., relating to petitioner and those about whom he was questioned and refused to answer] and would take a truck to bring it to the courthouse." Despite the fact that the District Judge, who had already ruled that this material was not relevant to the issues in the case, sustained objections to many questions put to Mr. Kunzig on this point, a reading of Mr. Kunzig's full testimony on this matter (R. 49-52) leaves little doubt that this truckload of material was never examined prior to the issuance of the subpoena to petitioner or prior to his testimony at the hearing.

At the close of the Government's case, the defense renewed its motion to dismiss on the ground that the grand jury was improperly constituted (R. 53). It also moved to dismiss, or for a judgment of acquittal, on the grounds, among others, that the Committee, in asking the questions petitioner would not answer, was engaged in the exposure of individuals unrelated to any legislative purpose and was thus exceeding its constitutional powers as a congressional investigating committee, that the First Amendment protected petitioner against forced answers to the particular

questions asked him, and that 2 U.S.C. § 192, read together with the Committee's authorizing resolution, was so vague and indefinite as to deprive petitioner of due process of law (R. 53-56). The District Court denied all of petitioner's motions (R. 17, 56).

The defense opened its case by renewing its motion to the court to request the House of Representatives to permit the inspection and copying of the material described in the subpoenas, which was denied (R. 58). Thereupon, the defense made an offer to prove "through the subpoenaed material that the committee had in its files all the information which it sought to elicit from the defendant about him and each of the other 30 individuals referred to and, in fact, a great deal more such information" from which "it would follow that the committee had no legislative purpose in its questions to defendant but rather had the sole purpose of . . . exposing him to the contempt of his labor associates by forcing him to inform on past associates and exposing to public contempt through the mouth of the defendant the persons about whom he was questioned" (R. 58-59). The defense further offered to prove, in large part by official public statements of the Committee, that the Committee has asserted a function and power to expose individuals to the public independent of any function related to legislation (R. 60). The District Court sustained the Government's objection to this evidence and it was included in the record as an offer of proof (R. 62-64).

The District Court thereupon found petitioner guilty (R. 64), and subsequently imposed a sentence of a $500 fine and a suspended sentence of imprisonment for one year (R. 18). At the time of sentencing the Court stated:

> "While I have found him guilty of contempt of Congress, he did not evidence any disrespect before the committee or engage in any disorderly conduct or at-

tempt to impede the committee in any respect, other than his refusal to answer questions dealing with persons, who, to use his words,

'may in the past have been Communist Party members or otherwise engaged in Communist activities, but who to my best knowledge and belief have long since removed themselves from the Communist movement.'

In other words, he claimed that he should not be required to 'inform' on people he had known.

"He answered all questions about himself and his own activities. He did not claim the Fifth Amendment. He claimed it would be wrongful to testify with respect to former associates. He stated that he would answer if a court of law directed him to do so. In taking this position, he acted on the advice of counsel. While his reasons for refusing to answer do not constitute a defense, I think they should be taken into consideration in determining the penalty which should be imposed for the violation of the statute."

From the judgment of conviction and sentence, petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit. A panel of that Court, on January 26, 1956, reversed the conviction by a two-to-one majority and remanded the case with directions to enter a judgment of acquittal.[6] After the Government's petition for rehearing *en banc*[7] was granted and the case reargued

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[6] The opinion of the majority of the panel (Chief Judge Edgerton and Circuit Judge Bazelon) is "nearly identical" with the dissenting opinion of the same two judges after the case was reargued *en banc* (R. 185).

[7] The determination of the Chairman of the Committee to protect his asserted untrammeled power of exposure is evidenced by his own statement, while testifying on February 23, 1956, before another committee of Congress on an appropriation bill, that he had insisted on the Gov-

before the full court, the court, largely accepting the opinion of the dissenting judge from the earlier panel, upheld petitioner's conviction by a majority of 6 to 2 (R. 175). Petitioner filed a petition for rehearing pointing out that the majority opinion seems to hold, erroneously, (i) that there *could* always be a valid legislative purpose in a congressional committee asking witnesses whether certain persons had once been members of the Communist Party and (ii) that, therefore, since there *could* have been a valid legislative purpose, proof that there was in fact no valid legislative purpose in particular questions, but only a purpose to expose, does not invalidate congressional committee action. Petitioner also pointed out in his petition for rehearing that the court had failed to make any reference in its opinion to the substantial question presented whether he had been deprived of his constitutional right to a fair and impartial grand jury. The petition for rehearing was denied by the full court (R. 200), and this Court granted certiorari.

Summary of Argument

I

The "power to investigate, broad as it may be, is . . . subject to recognized limitations" (*Quinn* v. *United States*, 349 U.S. 155, 160-161) and one such clear limitation is provided by the doctrine of separation of powers. When the sole or primary purpose of a congressional committee is

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ernment petitioning for rehearing after petitioner's conviction had been reversed by the panel. Mr. Walter stated: "The trouble is certain circuit courts of appeals lean over backwards to reverse convictions. It is such an outrageous thing that the Department of Justice on the insistence of your humble servant insisted on presenting a matter to a full court to review a decision. I invite you to look at the background of the two judges that set aside this conviction." *Hearings Before Subcommittees of the Committee on Appropriations*, House of Representatives, 84th Cong., 2d Sess., Second Supplemental Appropriation Bill, 1956, p. 47.

the exposure of individuals to public scorn and retribution, the committee is engaging in a legislative trial in violation of the doctrine of the separation of powers. Although a congressional committee may compel testimony which involves the exposure of individuals when such exposure is ancillary and incidental to an investigation in aid of legislation, it has no separate and distinct power of exposure unrelated to a legislative purpose.

The events of recent years have shown what happens when a congressional committee crosses the line from investigation in aid of legislation to investigation for the purpose of exposure and retributive justice. The investigation turns into a legislative trial with the functions of prosecutor, judge and jury all combined and the accused denied the right to impartial and independent judgment. Thus the experience of recent years, in which congressional investigations have invaded the province of the Executive and the Judiciary, combine with the history and logic underlying the doctrine of the separation of powers to demonstrate the necessity for limiting the authority of congressional committees to inquiry in aid of legislation. *Exposure for exposure's sake is beyond the pale.*

II

The questions petitioner refused to answer were asked solely for the purpose of exposing him and his former associates to public scorn and ridicule. Petitioner's proof of this exposure purpose took three forms:

> First, that the Committee asserted the power, as a separate and independent function apart from any investigation in aid of legislation, to expose allegedly subversive individuals to public scorn and retribution.
>
> Second, that the Committee itself, by its questioning

of petitioner and its colloquies with him, evidenced an unmistakable purpose of exposure.

Third, that the Committee had available to it in its own files, which it failed even to examine before subpoenaing petitioner, the information which it sought to elicit from petitioner.

Where the courts below erred was in their refusal to admit into evidence and to consider petitioner's overwhelming proof in each of these categories.

A. The Committee from its earliest days in 1938 down to the present has asserted a separate and independent function, all apart from investigation in aid of legislation, to expose allegedly subversive individuals to public scorn and retribution. In the words of the present Chairman of the Committee, "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society" (see p. 44; *infra*). Acting on this asserted function, the Committee has sought to identify present and past Communists, list them publicly, disseminate the listings as widely as possible, pronounce clearance or judgment of guilty and procure the application of social or economic sanctions to the guilty.

We do not assert that the Committee has at no time engaged in investigations in aid of legislation. We simply take the Committee at its word: that it has interpreted its assignment to include both exposure of individuals unrelated to any legislative purpose and the task of recommending or commenting on legislation. Thus the Committee's own interpretation of its functions is the background against which the questioning of petitioner must be judged, for, as the minority below stated, "it may be in-

ferred from a person's statement that he intended to do something, that he later actually did it" (R. 196).

B. The Committee, by its questioning of petitioner and its colloquies with him, evidenced an unmistakable purpose of exposure for exposure's sake. Petitioner informed the Committee that he would answer all questions about himself and about those whom he had known to be members of the Communist Party and who he believed still were; he only refused to testify about the Party memberships of those who had long since removed themselves from the Communist movement. The Committee was not interested in petitioner's activities or in the activities of others; all the Committee wanted was for petitioner to identify publicly as ex-Communists 30 persons whom he had known when he was cooperating with the Communists some 10 years before. The Committee did not seek the benefit of petitioner's experiences or informed opinions as they related to Communist techniques in labor unions. Although petitioner himself referred to the non-Communist oath provisions of the Taft-Hartley Act of 1947, the Committee did not ask a single question about the effect of this law or any later anti-Communist laws upon Communist activities in the labor movement or any questions relating to the strengthening of such laws—questions which would have been of vital significance to the Committee if it had been considering supplementary legislation. The Committee demanded only that petitioner become a vehicle of its exposure function and, acting as an informer, point the finger at a group of persons he had known some 10 years before. When he asserted that the Committee was going beyond the scope of its authority (R. 85), they gave him no indication of any legislative purpose. Instead, they dismissed him from the stand.

C. The Committee had in its possession a truckload of information concerning petitioner and the 30 individuals

named in the indictment (R. 46-47) and did not even bother to review this information before subpoenaing petitioner to testify at a public hearing in Washington (R. 49-52). The fact that the Committee did not know or care what it had in its own files is added evidence that the Committee's sole concern was to use petitioner as a vehicle of its pronounced policy of public exposure.

D. The majority below erred in refusing to consider the evidence of exposure presented by petitioner. The majority apparently justified this refusal by its conclusion that there *could* have been a valid legislative purpose in the questions petitioner refused to answer and therefore proof that there was in *fact* no such legislative purpose but only a purpose to expose does not invalidate congressional committee action. This refusal to consider proof of a purpose of exposure unrelated to any legislative purpose renders academic and meaningless the authoritative decisions of this Court limiting the investigative power, for *ex post facto* legislative rationalization of particular questions is always possible. If the position of the court below is allowed to stand, there will be no defense against a legislative trial.

III

A. The issue of statutory construction—whether the Committee's authorizing resolution covered the questions petitioner refused to answer—raises extremely complex problems of congressional intent. These problems arise from the possible ratification by the House of the broad interpretation of the Committee's authorization upon which the Committee has acted over the years with the knowledge of the members of the House. Because of this factor of possible ratification, counsel for petitioner would have preferred, as a sheer matter of advocacy, to have relied on the clear and overwhelming arguments against

exposure. Mindful, however, of our responsibility to this Court to give recognition to the doctrines favoring the avoidance of constitutional issues, we have deemed it incumbent upon us to present the authorities and reasons in support of the argument that the Committee has exceeded its own governing authorization in the instant case and that no legal ratification of the Committee's broad interpretation of its charter has ever been accomplished.

B. The questions petitioner refused to answer do not fall within the language of the Committee's authorization. The language authorizes the Committee to investigate (i) the extent, character and objects of un-American propaganda activities, (ii) the diffusion of subversive and un-American propaganda and (iii) other questions in relation to (i) and (ii) "that would aid Congress in any necessary remedial legislation." Reading the quoted phrase as modifying the authority set forth in (i) and (ii) as well as in (iii), the questions petitioner refused to answer, which were for exposure and would not "aid Congress in any necessary remedial legislation" (Point II), were clearly outside the Committee's authority. For, whatever its utmost scope and outer limits, the language used by Congress makes clear that the authority of the Committee cannot be considered to include a mandate to engage in exposure.

In a narrower sense the questions upon which petitioner's conviction are based appear to be unauthorized by the language of the resolution, which is confined to propaganda and propaganda activities. When the questions petitioner refused to answer are examined in the light of an inquiry limited to propaganda and propaganda activities, their lack of pertinence becomes evident. These questions were unrelated, both in substance and in time, to any possible issue involving propaganda. We submit that, were it not for the possibility that the House has ratified the broad

construction of the Committee authority which the latter has asserted and acted upon over the years, there would be no doubt that the questions petitioner refused to answer were outside the scope of the Committee's authorization.

C. Petitioner does not minimize the difficulties and complexities surrounding the issue of ratification. There can be little question that the House extended the life of the Committee and appropriated funds for it many times with full knowledge, through Committee reports, hearings and debates, that the Committee asserted an independent power of exposure in areas covering subversive and un-American activities far removed from propaganda. But a careful examination of the debates on the floor of the House on the occasions of extension, reenactment and appropriation, leads to the conclusion that there was no consistent congressional intent with respect to the precise scope of the Committee's authority. While the preponderant voice in these debates seems to have favored the asserted broad powers of the Committee, there was a distinct and forcefully-expressed minority view even among those voting in favor of the Committee. Thus, some members of the House indicated that they disagreed with the broad view of the Committee's authority and voted in favor of the Committee in the understanding that it would restrict its activities to proper ones in the future. And further doubt is cast on the meaning which can be ascribed to affirmative votes for the Committee by the frank remarks of Congressmen themselves to the effect that members of the House did not want to be accused of refusing to vote for investigations in this area.

This Court has recently indicated its scepticism of the doctrines of acquiescence and ratification. *Cf. Peters* v. *Hobby*, 349 U.S. 331. There are good reasons for viewing with such skepticism here, for the Committee's construc-

tion of its authorizing resolution goes so far beyond the plain meaning of the language that one may question whether the doctrine of ratification has any application at all. In view of these doubts concerning the applicability of the doctrine of ratification and the questions raised as to the congressional intent to be derived from the debates on the floor of the House, this Court may deem it appropriate to avoid the constitutional issues already presented by rejecting the contention as to ratification, and holding the questions petitioner refused to answer outside the scope of the authorizing resolution.

IV

The compelled disclosures sought by the Committee abridge rights protected by the First Amendment. We assume for purposes of this point, that this Court has rejected petitioner's argument that the Committee's purpose was exposure rather than investigation in aid of a valid legislative purpose. But it does not follow that the Committee could constitutionally require petitioner to reveal past political affiliations of his one-time associates. While the absence of a legislative purpose clearly invalidates Committee action, its presence cannot validate governmental abridgment of constitutional liberties.

A. Even before this Court's decision in *United States* v. *Rumely*, 345 U.S. 41, it was manifest that congressionally-compelled testimonial disclosures are subject to First Amendment prohibitions, for congressional inquiry, like congressional legislative action, may abridge the individual's freedom to espouse and express political views and to associate with others for political purposes. But any remaining doubt as to the applicability of the First Amendment to congressional inquiries was resolved by this Court in the *Rumely* case.

Although *Rumely* makes clear that congressionally-compelled testimonial disclosures may violate First Amendment rights, this Court has not yet elaborated guiding criteria for "the accommodation of these contending policies"—the policy underlying the First Amendment and the congressional power to require information as the basis of legislation. Whatever formula may ultimately be devised for accommodating the power of congressional inquiry with First Amendment guarantees, there will always have to be a weighing of the respective interests in the particular case. Thus, while future close cases may require this Court to establish more particular criteria, no such precise criteria are necessary here, for petitioner's First Amendment claims must be honored under any fair balance of the respective policies involved in the instant case. It is just this balancing of conflicting policies that the court below refused to undertake once it determined that the questioning of petitioner could be related to some legislative purpose.

B. Petitioner and the persons whom he was required to identify as former Communist Party members enjoy a constitutional right to engage in political activities and undertake political affiliations, free from unwarranted public revelation. The secrecy of the individual ballot and the privacy of political beliefs are not merely personal privileges—they are indispensable political necessities. Requiring petitioner to disclose the past political affiliations of his former associates abridges his right of political privacy as well as theirs. The right of political association, if it is to be meaningful, must include the right not to be subjected to public humiliation for such association.

Most serious is the prior restraint implicit in such compelled disclosures. First Amendment infringements cannot be evaluated without considering the effect of the Committee's questioning as a tangible and far-reach-

ing prior restraint upon the freedom of political activity and association of petitioner, of the persons whom he was required to identify and of the American public. If a union official from Rock Island can be subpoenaed in 1954 to disclose the 1944 political memberships of his former associates, fear will take the place of freedom of political association—as indeed it has to an unhealthy degree. Moreover, the restraint on the exercise of First Amendment rights implicit in the Committee's use of the power of compelled identification is compounded by the circumstances, the manner and the consequences of identification before the Committee. It is these realities of the legislative trial that today cause many to hesitate before undertaking political activities and associations.

C. There is no pervasive congressional need for the information sought from petitioner which could justify the restraints on political liberties here involved. At the time of petitioner's appearance in 1954, the program and the activities, and the character and membership, of the Communist Party during the years of petitioner's participation had been exhaustively examined by the Committee. The accumulation of more names from this earlier period cannot easily be fitted into any pattern of congressional need nor did the Committee suggest any such need when petitioner questioned their authority. But, even if it were conceded, arguendo, that the Committee in 1954 actually required identification of those who were Communist Party members between 1942 and 1947, still there was no legislative need for the identifications demanded from petitioner. The conclusive answer to the contention that the Committee had a need for the identification of these individuals is that they had all already been identified before this very Committee, in some cases by more than one witness. No cogent reason can be suggested why the Committee required public re-

identification of persons already identified before it as former members of the Communist Party. As the present Chairman of the Committee stated at an earlier hearing, "How can it be material to the purpose of this inquiry to have the names of people when we already know them?"

D. The court below was obligated to undertake an accommodation of the conflicting policies underlying the congressional power of inquiry and our First Amendment freedoms. It is precisely this weighing of conflicting policies that the court failed to undertake. Instead, the majority placed its principal reliance upon an earlier statement that "personnel is part of the subject." But, whatever justification the theory that "personnel is part of the subject" might have provided for the identification of Communists in strategic positions when Congress first initiated investigations into Communist activities, it cannot now support continued identification and re-identification of those who were Party members long ago. Even under the most liberal view of congressional authority to obtain legislative information, the action of the Committee cannot stand.

V

Section 192, read together with the authorization of the Committee, is so vague and indefinite as to deprive petitioner of due process of law. The authorization of the Committee, read literally, is restricted to investigations of propaganda as such and to activities closely related thereto. But the broad and vague interpretation of the Committee includes the power to investigate and expose all subversive and un-American activities. A witness before the Committee must decide, under pain of criminal sanction, whether a particular question and answer would be within the terms "subversive" or "un-American" activities. Probably no

two words in common usage today have as varying meanings to different people.

The question whether Communist Party membership 10 years ago in a different political climate was "subversive" or "un-American" is certainly one on which reasonable men can and do disagree. Section 192, read together with the vague Committee authorization and the facts of this case, falls because "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453.

VI

We turn now to the grand jury question raised, but left undecided, in *Quinn* v. *United States*, 349 U.S. 155, 170; *Emspak* v. *United States*, 349 U.S. 190, 202; and *Bart* v. *United States*, 349 U.S. 219, 223. As in those cases, the Court here will no doubt desire to consider first whether petitioner's refusal to "inform" on former associates, in the circumstances of this case, constituted a violation of the contempt statute and will only reach this grand jury point if it should reject all of petitioner's previous arguments (Points I-V).

Petitioner moved for a dismissal of the indictment on the ground that, by virtue of the fear instilled by the government employees security programs, less than 12 grand jurors were free from bias against him and able to cast their votes impartially, or for a preliminary hearing. Petitioner, by affidavit of counsel attached to his motion for dismissal, made an affirmative showing that the personal bias and fear that this Court had found absent in *Dennis* v. *United States*, 339 U.S. 162, actually existed on the part of the grand jurors in this case. Although the Government filed no answering affidavit challenging these facts, both courts below held against petitioner without opinion.

The refusal of the courts below to dismiss the indictment, or grant a preliminary hearing, on the ground of grand jury bias and prejudice created by the government employees security programs deprived petitioner of his right to a fair and impartial grand jury (*Cassell* v. *Texas*, 339 U.S. 282), acting as a "responsible tribunal." *Beavers* v. *Henkel*, 194 U.S. 73, 84. "Preservation of the opportunity to prove actual bias is a guarantee of a defendant's right to an impartial jury." *Dennis* v. *United States*, 339 U.S. 162, 171-172; *Morford* v. *United States*, 339 U.S. 258, 259. Whether a defendant's right to a fair and impartial grand jury be based on the Constitution or upon the statute requiring grand jury action for the misdemeanor involved in contempt (see 2 U.S.C. § 194) or because the Government chose that method of proceeding, the right to a fair and impartial grand jury is undeniable. Certainly, a jury containing less than 12 grand jurors free from bias and prejudice against the defendant makes a mockery of the grand jury process.

ARGUMENT

I

The Congressional Power to Investigate Is a Limited Power and Does Not Encompass Exposure for Exposure's Sake

Petitioner contends that it is beyond the constitutional power of the Committee to compel testimony for the purpose of exposing individuals to public scorn and retribution.

We do not take the restrictive view that testimony may not be taken by a congressional committee which may involve the exposure of individuals and subject them to public scorn and retribution when such testimony is relevant to an investigation in aid of legislation. What we do

contend is that a congressional committee may not expose individuals where such exposure is the purpose, the sole or primary purpose, of the questioning and no legislative purpose exists. Such legislative trials of individuals have an odious history and under our constitutional system have no place in a congressional inquiry.

Nor do we take the restrictive view that congressional committees may only investigate in connection with a specific piece of legislation, proposed or enacted. By "investigation in aid of legislation," we mean and shall mean throughout this brief, all those investigations reasonably related to Congress' power to legislate, including the review of the actions of executive departments in the expenditure of public funds as well as the preparation of new legislation and amendments to the Constitution, and the continued survey of the operation of legislation already enacted. For this complex of activities we use the term "investigation in aid of legislation" or "legislative purpose."

A. *The Congressional Power of Investigation Is an Implied Power and Limited to Investigation in Aid of Legislation*

From the very beginning of the judicial consideration of congressional investigatory power, the nature of that power as an implied and limited function of Congress ancillary to its grant of legislative power has been recognized. Nowhere in the Constitution is there any reference to the investigatory power; it has had to be spelled out as auxiliary to the express legislative authority granted Congress by the Constitution. *Kilbourn* v. *Thompson*, 103 U.S. 168, 183; *McGrain* v. *Daugherty*, 273 U.S. 135, 173; see Fay, *Judicial Protection Against Abusive Practices*, 29 Notre Dame Lawyer 225, 226; Keating, *Protection of Witnesses in Congressional Investigations*, 29

Notre Dame Lawyer 212, 213. The exercise of this implied and limited power is subject to review by the courts; as early as 1875 Judge MacArthur asserted that "it is entirely competent for any court of justice to inquire into the privilege of Congress . . . the doctrine that Congress is . . . the sole and exclusive judge of its own privileges can never be the rule in a court of justice and can never be sustained."[8]

This Court delved into the background and historical precedents of the investigatory power and declared in its first case in this field that neither house of Congress "possesses the general power of making inquiry into the private affairs of the citizen," stressing the doctrine of separation of powers. *Kilbourn* v. *Thompson*, 103 U.S. 168, 190, 192-193. The investigatory power was again described as being subject to "controlling limitations or restrictions" in *McGrain* v. *Daugherty*, 273 U.S. 135, 176. In the latter case, this Court stated that "neither house is invested with 'general' power to inquire into private affairs and compel disclosures, but only with such limited power of inquiry as is shown to exist when the rule . . . just stated is rightly applied" (pp. 173-174).

The Court again stressed the "limited power of inquiry" in *Sinclair* v. *United States*, 279 U.S. 263, 291-292, in a general review of the cases to date:

> ". . . while the power of inquiry is an essential and appropriate auxiliary to the legislative function, it must be exerted with due regard for the rights of witnesses, and . . . a witness rightfully may refuse to answer where the bounds of the power are ex-

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[8] *Ex parte Irwin*, reported in full at 3 Cong. Rec. 707-27. To the same effect is *McGrain* v. *Daugherty*, 273 U.S. 135, 176, where this Court stated that ". . . a witness rightfully may refuse to answer where the bounds of the power are exceeded. . . ."

ceeded or where the questions asked are not pertinent to the matter under inquiry.

"It has always been recognized in this country, and it is well to remember, that few if any of the rights of the people guarded by fundamental law are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs."

The restricted nature of the power of Congress to conduct investigations was once again emphasized in the most recent pronouncement of this Court in *Quinn* v. *United States*, 349 U.S. 155, 160-161:

"There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes [citing *Cf. Anderson* v. *Dunn*, 6 Wheat. 204] or through judicial trial [citing *In re Chapman*, 166 U.S. 661]—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively [citing See *McGrain* v. *Daugherty*, 273 U.S. 135, 175].

"But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose [citing *Id.*, at 173-174; *Kilbourn* v. *Thompson*, 103 U.S. 168, 190]. Nor does it extend to an area in which Congress is forbidden to

> legislate [citing Compare *United States* v. *Rumely*, 345 U.S. 41, 46]. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary [citing *Kilbourn* v. *Thompson*, 103 U.S. 168, 192-193]. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination which is in issue here."

In the *Quinn* case, the Chief Justice has again brought to the forefront what some proponents of unlimited investigatory power might perhaps have forgotten, its restricted and legislative nature. A similar reminder of the limited nature of the investigatory power comes from ex-President Truman. Viewing the problem from his experience both as legislative investigator and Chief Executive, Mr. Truman stated: "The investigative power of Congress is not limitless. It extends only so far as to permit the Congress to acquire the information that it honestly needs to exercise its legislative functions. Exercised beyond these limits, it becomes a manifestation of unconstitutional power. It raises the threat of legislative dictatorship . . . ."[9]

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[9] New York Times, May 9, 1954, p. 54. A noted student of the history of legislative investigations, and one who urged the broad view of Congressional power, has summarized the extent of the investigatory power in the succinct phrase "the limits of inquiry are the limits of legislative power." Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 213.

B. *Congressional Investigation Which Has As Its Purpose the Exposure of Individuals To Public Scorn and Retribution Is Beyond Constitutional Limits*

In the last section of the brief, we summarized the precedents which have delimited the implied power of investigation. At the very least, these cases support the following propositions relevant here:

(i) The investigatory power is a limited power subject to review by the courts.

(ii) The investigatory power is limited by the basic principle of our form of government—the separation of legislative, executive and judicial powers—which forbids congressional committees to make "inquiry into the private affairs of the citizen" unrelated to a valid legislative purpose or to encroach on the powers of law enforcement which are assigned under our Constitution to the Executive and the Judiciary. This limitation we will discuss here.

(iii) The third limitation is that inherent in the constitutional guarantees of individual liberty in the Bill of Rights, which restrict and modify all Congressional authority. The relationship of this restriction to the issues in this case is covered in Points IV and V of the brief.

We shall show in Point II that the Committee on Un-American Activities has acted in this case in pursuance of its expressed view that one of its separate and independent functions is the identification of allegedly subversive individuals and their exposure to public scorn and retribution. Here we shall demonstrate—if such demonstration be necessary—that a congressional committee has no such power of exposure unrelated to a legislative

The cornerstone of our government is the doctrine of separation of powers. "A legislative, an executive, and a judicial power comprehend the whole of what is meant and understood by government. It is by balancing each of these powers against the other two, that the efforts in human nature towards tyranny can alone be checked and restrained, and any freedom preserved in the Constitution." [10] "The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." [11]

Legislative power concerns the determination by duly enacted law of general standards of conduct. The prosecution of individuals under duly enacted law is the concern of the law enforcement officers of the Executive branch of the Government. The determination of individual guilt and law violation is the concern of the Judicial branch. Courses of conduct or patterns of action may be legislatively inquired into only for the purpose of revealing the need for new laws and the effectiveness of existing laws, not for the purpose of exposure and punishment of the individual. When a committee of Congress determines that a general standard of conduct (past membership in the Communist Party) is reprehensible and seeks to enforce this standard by building a list of persons who engaged in that conduct

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[10] John Adams, letter to Richard Henry Lee, November 15, 1775; quoted by Benjamin F. Wright, "The Federalist on the Nature of Political Man," *Ethics*, January 1949, p. 9.

[11] *Myers v. United States*, 272 U.S. 52, 293 (Brandeis, J., dissenting).

and then, by publicity, inflicting upon such persons public scorn and retribution, the Committee is arrogating to itself, in this process of exposure, legislative,[12] executive and judicial functions in derogation of our historic separation of powers.

This is what we believe Mr. Chief Justice Warren meant when he wrote in the *Quinn* case that "the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary." 349 U. S. at 161. This is also what we believe Mr. Justice Miller meant when he wrote in the *Kilbourn* case, in a discussion stressing the doctrine of separation of powers, that no congressional committee "possesses the general power of making inquiry into the private affairs of the citizen." 103 U. S. at 190. For, when a congressional committee inquires publicly into the private affairs of a citizen not in aid of a legislative purpose but for the avowed purpose of holding that citizen up to public scorn and retribution, that committee is prescribing a general standard of conduct, not theretofore part of the law of the land, applying that standard and determining guilt under it retroactively.

So, too, in *Greenfield* v. *Russel*, 292 Ill. 392, 127 N. E. 102 (1920), the Supreme Court of Illinois held that the legislature had no power to investigate "for the purpose of in-

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[12] If the Committee's determination of reprehensibility in the general standard of conduct (past membership in the Communist Party) can be deemed legislative in any sense, it is a legislative authority which belongs to the full Congress, not to one of its many committees. Furthermore, in so acting, the Committee is arrogating to itself legislative functions of a retroactive nature barred by the Constitution. Article I, § 9; Amendment V. See also *United States* v. *Lovett*, 328 U.S. 303. If Congress deems it necessary to penalize membership in the Communist Party by exposure, it can do so only prospectively and by duly enacted laws consistent with the Bill of Rights and enforceable not by the legislative branch but by the Executive and Judicial branches of Government.

tentionally injuring or vindicating any institution or individual," stating (p. 401):

> "If the rights of private individuals and private institutions could be invaded by the legislature in that manner, their reputation and their character and their business would be greatly endangered if not entirely destroyed, and they would not have or enjoy in such public investigations their constitutional right of answering and making a defense to such charges, however false they might be."

And in *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463, 2 N. E. 615 (1885), the New York Court of Appeals announced the same rule (p. 485):

> "An investigation . . . merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, where the legislature had no power to put him or it on trial for the supposed offenses . . . would not, in our judgment, be a legislative proceeding, or give to either house jurisdiction to compel the attendance of witnesses or punish them for refusing to attend."

See also Taylor, *Grand Inquest* (1955) pp. 30-135.

An example from another field might clarify the issue. Congress was acting within its constitutional authority in 1895 when it made the interstate transportation of lottery tickets a crime. *Champion* v. *Ames*, 188 U. S. 321. Despite this fact, no one would seriously contend that a congressional investigating committee could today use its compulsory process to build up a list and expose those who carried lottery tickets from state to state. Clearly this would be an encroachment upon the prosecutorial functions of the Executive and the adjudicatory functions of the

Judiciary. But how much more clearly would it have been an encroachment on the Executive and Judicial branches for a committee of Congress, in a wave of anti-gambling spirit in the early nineties, before the channels of interstate commerce were closed by law to lotteries, to have used its compulsory process to build up a list of those who had in years long past carried lottery tickets across state lines and to have exposed them for their past conduct to public scorn and retribution. This would indeed have been setting a general standard of conduct, applying that standard and determining guilt under it retroactively and without regard to any statutory period of limitations. As we shall see (Point II), that is exactly what the Committee asserts the power to do and what it has done in this case.

Nowhere is the wisdom of the doctrine of separation of powers more evident than in the field of congressional inquiries. The events of the past years have shown us what happens when a congressional committee crosses the line from investigation in aid of legislation to investigation for the purpose of exposure and retributive justice. The investigation turns into a legislative trial with the functions of prosecutor, judge and jury all combined [13] and the accused denied the right to impartial and independent judgment. The protections of the Bill of Rights fall by the wayside; partisanship, passion and prejudice are substituted for the safeguards of the courtroom. Jefferson's characteristic wisdom and foresight caused him to warn against

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[13] The Court will find significance, or at least amusement, in the Freudian slip of the tongue by committee counsel when he was testifying at petitioner's trial. When asked whether it was his responsibility to grant extensions of time on subpoenas, he answered: "Since at that point there were usually lawyers in the case, lawyers for *the defendants*—I pardon me—lawyers for the witnesses, I usually then would be called by one of the attorneys for a witness, and then usually, after conferring with the chairman, would grant the extension" (R. 42). (Emphasis supplied.)

legislative despotism in words applicable to recent congressional inquiries: "One hundred and seventy-three despots would surely be as oppressive as one." [14]

This point has been exceedingly well summarized by one student of the subject:

> "Congressional investigators are encroaching upon the constitutional functions of the executive and judicial branches of government. Congressional investigators are seeking to administer and enforce not only laws which exist but 'laws' which have never been enacted. They are in many instances conducting legislative trials and legislative inquisitions into the lives of private citizens without warrant of law and without regard to the constitutional safeguards enshrined in the Bill of Rights. Such proceedings are in circumvention if not violation of the constitutional provisions vesting the judicial power of the United States in the courts and forbidding the Congress to pass any bill of attainder or ex post facto law.
>
> "Witnesses are questioned regarding events that occurred fifteen, twenty years ago, not for the purpose of informing the Congress of present evils requiring legislative action, but for the purpose of holding individuals up to public scorn and obloquy, depriving them of their livelihood and punishing them for actions not forbidden by law. Witnesses themselves under inquiry are pressed to act as accusers and informers not regarding recent happenings which may involve present dangers but regarding happenings quite difficult to recall with reasonable accuracy because they occurred years ago in a totally different context of circumstances than that now prevailing. There are no statutes of limi-

[14] The Federalist, No. XLVIII (1778), p. 341.

tation to protect those who fall within the clutches of a Congressional investigation." Address of Mr. Benjamin V. Cohen to the Indiana B'nai B'rith Convention, Sept. 27, 1953.

Another careful observer, a former United States Attorney, has written as follows:

> "The congressional inquiry has not hesitated to plunge into fields overlapping the Executive and the Judiciary, to visit all the realities of conviction and punishment on individuals without the substantial safeguards of criminal procedure, to 'make' cases for prosecution even if it means inducing and entrapping the witness into the commission of crime, to call witnesses because they are accused of wrongdoing, and with little expectation that any information of value could be obtained from the witness. Legislative ventures unauthorized by express powers and intruding into fields reserved to other components of organized society make it imperative to bring remedial thinking abreast of realities." Fay, *Judicial Protection Against Abusive Practices*, 29 Notre Dame Lawyer 225, 234.

Both the history and logic underlying the doctrine of separation of powers combine with the experience of recent years in which congressional investigations have been invading the province of the Executive and the Judiciary to demonstrate the necessity for limiting congressional committees to inquiry in aid of legislation. If "the history of liberty has largely been the history of observance of procedural safeguards" (*McNabb* v. *United States*, 318 U.S. 332, 347), the history of legislative trials, from the days of Socrates to the present, teaches the dangers to a free society inherent in governmental action unguarded by those

procedural safeguards. *Exposure for exposure's sake is beyond the pale.*[15]

John Quincy Adams made this exact point in arguing against an unlimited congressional power of inquiry years ago in 1832 at another period of stress:[16]

> ". . . the authority of the committee and of the House itself did not extend; under color of examining into the books and proceedings of the bank, to scrutinize, for animadversion or censure, the religious or political opinions even of the president and directors of the bank, nor their . . . private lives or characters, nor their moral, or political, or pecuniary standing in society . . ."

A modern legislator, with outstanding experience in investigations, likewise views exposure investigations as beyond the power of Congress:

> ". . . the rights of Congress are no broader than the legitimate objects from which they have been im-

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[15] We have here predicated our argument against the congressional right to expose on the doctrine of separation of powers. The argument could have been equally well pitched upon the limitations on the investigative power arising from its nature as an adjunct to legislative authority. So too, a legislative inquiry designed not to further a legislative purpose but to try and expose an individual is a bill of attainder expressly prohibited by the Constitution. Article I, Section 9. Again, the forced public disclosure of unpopular associations without adequate legislative purpose abridges the right to speak, assemble and petition Congress guaranteed by the First Amendment. See *United States* v. *Rumely*, 345 U.S. 41, 43-45. Finally, the contempt statute, read together with the authorization of the Committee on Un-American Activities, would quite clearly be unconstitutionally vague and indefinite if not limited to questions in aid of a legislative purpose. See pp. 119-124, *infra*. All of these constitutional doctrines—separation of powers, limited legislative authority, bill of attainder, freedom of speech and assembly, vagueness and indefiniteness—lead inexorably to the same conclusion forbidding exposure for exposure's sake.

[16] Quoted in Taylor, *Grand Inquest* (1955), p. 139. For a full description of the controversy, see Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 179-180.

plied. And I believe those objects are *only* the two referred to a moment ago: (1) to gather facts about proposed legislation, and (2) to inquire into the workings of existing federal laws. There lies the first and perhaps the only important substantive restraint which Congress must impose upon itself. No congressional investigation is justified unless it can be directly related to the lawmaking process in one of these ways. In other fields, investigations are proper and often necessary, but not by Congress. It follows that I disagree strongly with those who argue that Congress is also responsible for informing and educating the public by looking into anything which may happen to catch the popular fancy of the moment." Keating, *Protection of Witnesses in Congressional Investigations*, 29 Notre Dame Lawyer 212, 214.

Dean Erwin N. Griswold of the Harvard Law School, in the course of his distinguished series of lectures on the Fifth Amendment and congressional investigatory power, has declared:[17]

> "In this connection I would like to state my own view that a legislative investigation is improper when its sole or basic purpose is to 'expose' people or to develop evidence for use in criminal prosecutions. We have had chairmen of legislative committees who have announced that that was the purpose of the hearings they were conducting. In my opinion, they have thus demonstrated the impropriety of the exercise of power which they are seeking to carry out, and I would hope that the courts, when properly invoked, would decide that there was no legislative power for such a purpose."

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[17] Griswold, *The 5th Amendment Today* (1955), p. 48.

And, in the same vein, Alan Barth, after a careful study of this entire problem, concluded that "it [the investigating power] cannot properly be used to 'expose' individuals and voluntary associations . . ." [18]

A concern with the use of congressional investigating committees as vehicles for exposure, similar to that expressed by these legislators and commentators, has led to the formulation of a proposed Code of Fair Procedure for Congressional Investigating Committees, which provides:

> "Sec. 3. *Subject Matter of Investigations.* a. A committee shall not conduct any investigation primarily to expose any person to public scorn or to collect evidence for use in any criminal prosecution." (Maslow, *Fair Procedure in Congressional Investigations: A Proposed Code*, 54 Col. L. Rev. 839 (1954)).

The very idea of congressional committee exposure for the sake of exposure unrelated to a legislative purpose is incompatible with our constitutional system. If the Congress deems a continuing system of exposing individual Communists is necessary or desirable to combat a present danger and existing legislation is inadequate to provide it,

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[18] Barth, *Government By Investigation* (1955), p. 199. Woodrow Wilson's oft-quoted statement—"the informing function of Congress should be preferred even to its legislative function"—is misquoted in this connection. "The view that investigating committees may undertake a generalized program of exposure for the sake of informing the public sometimes appeals for authority to Woodrow Wilson's observation about the informing function of Congress. . . . It should be noted, however, that Wilson was writing not about investigating committees but about discussion and interrogation within the main bodies of Congress. Moreover, he was writing specifically about legislative supervision of executive operations. There is certainly no warrant in what Wilson wrote for use of the investigating power to accomplish . . . exposure of the personal opinions of private citizens." *Id.*, p. 23. Furthermore, "President Wilson did not write in light of the history of events since he wrote; more particularly he did not write of the investigative power of Congress in the context of the First Amendment." *United States* v. *Rumely*, 345 U.S. 41, 44.

Congress has the authority to provide, prospectively not retroactively, for such disclosures and exposures by law as do not violate the Bill of Rights. *Cf.* Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781 *et seq.* But Congress has not the constitutional authority to delegate to itself or to a committee the power to define and determine individual wrongdoing by exposing persons to public scorn and retribution.

II

The Questions Petitioner Refused to Answer Were Asked Solely for the Purpose of Exposing Him and Former Associates to Public Scorn and Ridicule

Petitioner sought to prove in the trial court that the Committee's sole purpose in seeking to compel answers to the questions at which he balked was to expose him to scorn and ridicule by forcing him to become an informer on former associates and to expose them to scorn and ridicule by publicizing their previous Communist affiliations. Petitioner sought to demonstrate the Committee's purpose of exposure by three avenues of proof:

> First, that the Committee asserted the power, as a separate and independent function apart from any investigation in aid of legislation, to expose allegedly subversive individuals to public scorn and retribution.
>
> Second, that the Committee itself, by its questioning of petitioner and its colloquies with him, evidenced an unmistakable purpose of exposure apart from and unrelated to any legislative purpose.
>
> Third, that the Committee had available to it in its own files, which it failed even to examine before subpoenaing petitioner, the information which it sought to elicit from petitioner.

The District Judge, apparently believing that petitioner had no right to prove that the Committee's purpose was one of exposure, refused to admit petitioner's evidence in support of the First and Third propositions and to consider the questioning of petitioner (which, of course, had been introduced in evidence as part of the Government's case) as proof of exposure. The majority of the court below agreed with the trial court's refusal to admit petitioner's evidence in support of the First proposition and refused even to consider petitioner's evidence in support of the Second and Third propositions.

We submit that the intellectual hostility of the courts below to petitioner's proof of exposure evidences a lack of understanding of the doctrine of separation of powers and the dangers inherent in legislative trials. We have already shown that a witness testifying under subpoena before a congressional committee has the right to refuse to answer questions asked for the purpose of exposure and, as a corollary thereto, he must likewise have the right in court to make proof that this was in fact the purpose of the Committee in seeking to force answers to the questions at which he balked. In refusing to admit and consider petitioner's proof of exposure, the courts below have in effect deprived a witness before a congressional committee of his protection against a legislative trial.

Petitioner did not seek in the courts below, and does not seek here, to demonstrate some ulterior motive in the minds of the Committee. We do not bring to this Court the case of a committee chairman acting out of bias and prejudice against the witness or the case of one receiving money from a third party. What we do bring to this Court is a case where the objective facts demonstrate that the Committee was acting in pursuance of its asserted function of exposure and not its asserted coordinate function of investi-

gation in aid of legislation. If the absence of a legislative purpose cannot be proven in this manner, then the doctrine of separation of powers in this field is indeed a nullity and the citizen will be subject to the vagaries of a legislative trial.

We turn now to the three avenues of proof of exposure.

A. *The Committee on Un-American Activities Asserts the Power, as a Separate and Independent Function Apart from Investigation in Aid of Legislation, to Expose Allegedly Subversive Individuals to Public Scorn and Retribution*

At the trial below, petitioner offered in evidence a large amount of material as overwhelming proof that the Committee had asserted an independent power and function, apart from and unrelated to its duty to inquire in aid of legislation, to expose allegedly subversive persons to public knowledge and scorn. For this purpose petitioner offered in evidence a series of excerpts from official reports and hearings of the Committee (R. 62-63, 111-163), excerpts from statements on the floor of Congress by the Chairman and members of the Committee in connection with Committee business (R. 63, 164-168), and statements to the press by the Chairman and members of the Committee on Committee business (R. 64, 168-174). The Government conceded by stipulation that all the reports and statements had in fact been made and that the transcriptions were accurate (R. 62, 109-111). The Government, however, objected to the introduction of this evidence on the ground that it was irrelevant to any issue in the case and the District Judge, consistent with his apparent position that petitioner had no right to prove that the Committee's purpose was one of exposure and retribution, sustained the objection (R. 63-64). The defense proferred the evi-

dence as an offer of proof (R. 62-63) and it is in the record available for use in this Court. All apart from this offer of proof, however, it appears likely that most or all of the material would have been available to this Court on judicial notice. *Carolene Products Co.* v. *United States*, 323 U. S. 18, 28.

The majority of the court below stated that this "material is not evidence" and that "we must judge each inquiry in its own setting and upon its own facts" (R. 184). But certainly, consistent with petitioner's right to prove that the Committee's purpose in questioning him was one of exposure, petitioner had the right to prove that the Committee's regular course of conduct included exposure independent of any legislative purpose. The point was well stated by the minority below (R. 195-196):

> "The District Court ruled that express claims of an independent power of exposure, made without particular reference to the Watkins hearing, do not tend to prove that the Committee's purpose in the Watkins hearing was exposure. In our opinion this was error. Although general propositions do not decide concrete cases, they help to decide them. Intentions tend to result in acts. By claiming that it had the authority and duty to expose, the Committee implied that it intended to expose. And as the Fifth Circuit recently said, 'of course it may be inferred from a person's statement that he intended to do something, that he later actually did it. Mutual Life Ins. Co. of New York v. Hillmon, 145 U. S. 285, 295, 12 S. Ct. 909, 36 L. Ed. 706.' *Shurman* v. *United States*, 219 F. 2d 282, 290, fn. 9 (1955)."

What the Court is witnessing here is an effort by legislators to maintain one official position in Congress and before the people and another in the courts. While the Committee

makes political capital of its exposure activities the length and breadth of the land, its attorneys in court not only uniformly deny that the Committee had any such end in view, but seek to keep from the consideration of the courts the proof that the Committee asserted and acted upon this power of exposure. In a word, exposure is the Committee's byword everywhere except in the courtroom. We do not believe that the Committee can successfully turn one face to the Congress and the people and another face to this Court. In this belief, we turn now to the Committee's avowal of its exposure function and its implementation of this function.

1. *Exposure*

As the Committee itself proudly states, "exposure in a systematic way began with the formation of the House Committee on Un-American Activities, May 26, 1938." This Committee, again in its own words, "was started on its way May 20, 1938, with instructions from the United States House of Representatives to expose people and organizations attempting to destroy this country. That is still its job and to that job it sticks" (R. 130, 131, *100 Things You Should Know About Communism* (1951), 82d Cong., 1st Sess., H. Doc. No. 136, pp. 19, 67). These statements by the House Committee, made in a pamphlet especially designed for public distribution and distributed in more than a million copies,[19] accurately reflect the view of its own power and functions which the Committee has taken. Identification, the listing of individuals, the passing of a judgment of guilt or innocence without regard to any statutory period of limitation and without regard to any preexisting law, the attempt to invoke public condemnation and social and economic osfracism of indi-

[19] Carr, *The House Committee on Un-American Activities* (1952), p. 357.

viduals, in short, exposure—all directed toward the public, rather than toward the House to which it is an appendage—have been a coordinate if not the primary or even the all-pervasive part of the Committee's work, totally independent of any of its legislative functions. The Committee, by its own avowals, has converted itself into a committee of public safety to identify and publicly brand individuals as enemies of the Republic.

The Chairman of the Committee on Un-American Activities in the 83rd Congress, the Committee which questioned petitioner, described the Committee's function as one to "ferret out Communists" and track "down individual Communists" (R. 169-170), stating:

> "So as a committee of Congress, elected by the people, we feel that we have a duty and that duty has been imposed upon us by Congress not only to report to Congress for the purposes of remedial legislation but to inform the people who elected us about subversive activities" (R. 150).

This asserted independent power to expose had long before been described as a "*special function*" of the Committee—"the discovery and exposure of those enemy groups which fight with non-physical weapons as a fifth column on our home front" (R. 151-152).

Possibly the clearest statement on this subject is that of the present Chairman of the Committee. Defending the Committee's August, 1955, investigation of Communism in the theatre, Chairman Walter stated: "Unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." *U. S. News and World Report*, August 26, 1955, p. 71.

While at some times and on some occasions the Committee may well have performed a legislative function, it is quite clear that in the proceedings in which petitioner was involved, the Committee was not performing or even attempting to perform a legislative function. It was acting, in the Chairman's words, "unlike most congressional committees." It was asserting, in addition to and completely apart from its legislative functions, a power and duty to find and publicly identify every past or present Communist, and then to embody that identification in some printed report to be circulated to the American people—that whole system of operation which has come to be called "exposure."

2. *Identification*

The identification of individuals is the first step in this well-organized system of exposure. Here is how the Committee, down through the years, and up to and including the Committee in the 83rd Congress, before which petitioner appeared, has openly proclaimed that public identification of individuals is what it is looking for:

> "While Congress does not have the power to deny to citizens the right to believe in, teach, or advocate communism, fascism, and nazism, it does have the right to focus the spotlight of publicity upon their activities." (R. 163, H. Rep. No. 2, 76th Cong., 1st Sess., p. 13 (1939)).
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> * * * * *
>
> ". . . Investigation to inform the American people . . . is the real purpose of the House Committee . . . The committee conceives its principal task to have been the revelation of the attempts now being made by extreme groups in this country to deceive the great mass of earnest and devoted American citizens . . .

The purpose of this committee is the task of protecting our constitutional democracy by . . . pitiless publicity. . . ." (R. 163, H. Rep. No. 1476, 76th Cong., 3d Sess., pp. 1, 3, 24 (1940)).

* * * * *

"This committee is the only agency of Government that has the power of exposure. . . . There are many phases of un-American activities that cannot be reached by legislation or administrative action." (R. 163, H. Rep. No. 1, 77th Cong., 1st Sess., 24 (1941)).

* * * * *

"The Committee would like to remind the Congress that its work is part of an 11-year continuity of effort that began with the establishment of a Special Committee on un-American Activities in August 1938. The committee would also like to recall that at no time in those 11 years has it ever wavered from a relentless pursuit and exposure of the Communist fifth column." (R. 128, *Annual Report for 1949*, p. 15).

* * * * *

"In this annual report, the committee feels that the Congress and the American people will have a much clearer and fuller picture of the success and scope of communism in the United States by having set forth the names and, where possible, the positions occupied by individuals who have been identified as Communists, or former Communists, during the past year. In the matter of hearings relating to the motion-picture industry and professional groups, the committee is including those individuals who were named during 1951, inasmuch as these hearings have been of a con-

tinuing nature." (R. 120-121, *Annual Report for 1952*, p. 6).

* * * * * *

"The Senate group, Mr. Velde said, is searching for 'organized' communistic activity in the educational system and dealing with institutions. His committee will continue to concentrate upon 'individual members of the Communist Party who in the past and possibly at the present time, are engaged in the field of education'." (R. 169, New York TIMES, February 12, 1953).

* * * * * *

"In an opening statement, Mr. Velde insisted that the investigation was no different from preceding inquiries into labor unions and other areas. He emphasized that the committee was not seeking to investigate institutions as such, but to ferret out Communists operating within them." (R. 169-170, New York TIMES, February 26, 1953).

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"The House Un-American Activities Committee said today it had decided to make no changes in its methods of ferreting out Communists wherever it found them." (R. 170, New York TIMES, May 21, 1953).

* * * * * *

"These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Mich., in 1952. As a matter of fact, in 1952 the committee reported that during its investigation the identity of over 600

individuals as Communist Party members was obtained." (R. 113, *Annual Report for 1954*, pp. 14-15).

• • • • •

"Mr. Moulder. . . .

"The Committee on Un-American Activities has and will continue to expose communism. It has an excellent record of public service in exposing and warning the American people of the evils of communism, and we must not permit baseless propaganda to injure the work of the committee." (R. 165, 99 Cong. Rec. 1985, March 16, 1953).

• • • • •

"Mr. Jackson. . . .

"The work of the House Committee on Un-American Activities is one designed to give the American people a continuing picture of the Communist Party at work; to expose its propaganda efforts, and to inform citizens of organizations and individuals dedicated to the destruction of the American Republic. Its investigations are confidential only to the extent necessary to determine facts. Its hearings are public, open to all informational media, and its millions of publications go directly to the people of this Nation." (R. 165, 99 Cong. Rec. 2019, March 17, 1953).

• • • • •

"Mr. Velde. . . .

"No. 1. Demands and requests that an investigation be made of individual Communists in the religious field. To these loyal and sincere citizens, may I say that I feel Communists should and will be ferreted out and reported to the Congress and to the people; wher-

ever they may be found." (R. 165, 99 Cong. Rec. 2130, March 19, 1953).

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"Mr. Jackson. Mr. Speaker, during the past 3 years, the Committee on Un-American Activities, of which I am a member, has been conducting an investigation into the extent of Communist infiltration of the Hollywood motion-picture industry. During this period, the committee has exposed several hundred persons who were employed in the motion-picture industry and who were or are members of the Communist Party." (R. 166, 99 Cong. Rec. 1371, February 24, 1953).

Identification has been the preoccupation of the Committee not only in statements such as those quoted above but also in the actual conduct of its hearings. A comparison of the number of times in the course of its hearings that the Committee has asked the question, "Do you know John Doe to be or have been a member of the Communist Party?", to the number of times it has asked substantive questions, would demonstrate that the paramount interest and concern of the Committee lies in identification. It is conceivable that some years ago, at the beginning of congressional interest in subversive activities, the identification of Communists in strategic positions pursuing currently or recently a course or pattern of conduct prescribed by the Communist Party might well have had a direct relevance to appropriate legislative inquiry with respect to the activities of adherents of the Communist Party, and the need for new legislation or more effective enforcement of existing legislation. But it is inconceivable that some eighteen years of repetition of questions serving only to identify as Communists—not presently but in years

long past—thousands of ordinary individuals all over the country without even attempting to show the nature of their work for the Party in recent years, has any purpose other than the exposure of those individuals.[20]

As part of its identification process, the Committee invites individuals and patriotic organizations to send in the names of suspected Communists.[21] From these and other sources, the Committee maintains extensive files, which it has variously described from time to time as including: 1,000,000 names,[22] individual files on 3500 leaders of the Communist Party, its front organizations and leaders of Fascist groups,[23] and a collection of lists of signers of Communist Party election petitions, which contain 363,119 signatures.[24]

As far as can be determined, persons are included in the files prior to formal "identification" by a "friendly" witness before the Committee. Any information received about

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[20] ". . . the committee has sometimes seemed more interested in exposing allegedly subversive *persons* than it has in exposing subversive *activity*. Admittedly, the committee has many times sought and obtained evidence showing that actual misdeeds have been committed. Its hearings on atomic espionage and on espionage in the government service were certainly concerned with such misdeeds. But all too frequently the committee has been content to put the finger on Communists or fellow travelers while making little or no attempt to demonstrate that they have engaged in any acts of a subversive character." Carr, *op. cit. supra*, p. 454.

[21] R. 125, Annual Report for 1951, p. 5; Statement of Chairman Velde in New York Times, January 28, 1954, R. 171:

> "The House Un-American Activities Committee moved into the picture this afternoon. Its chairman, Harold H. Velde, Illinois Republican, suggested that the VFW supply names of suspected Communists to the Committee as well as to the FBI.
>
> "We welcome the cooperation of such patriotic organizations," he declared.

[22] H. Rep. No. 2748, 77 Cong., 2nd Sess., p. 2; Carr, *op. cit. supra*, p. 253.

[23] R. 129, Annual Report for 1949, p. 19.

[24] R. 127, Annual Report for 1950, p. 41.

"subversive" individuals is apparently sufficient to cause the inclusion of an individual in the files of the Committee. This is evident from the fact that the Committee has issued "reports" to members of Congress on tens of thousands of persons,[25] but it has only "obtained positive identification of 4151 persons who had been Communist Party members."[26] The nature of these files is evidenced by a typical report issued on Herman F. Reissig, a Protestant minister, which was published in the Congressional Record.[27] The "so-called" public files of the Committee appear to consist in part of names obtained, without sifting, from a mass of documentary material relating to alleged Communist and front organizations.[28]

The formal public identification takes place in the Committee hearing room, which in recent years and particularly in the 83rd Congress has tended to be in the city in which the individuals to be identified live, and not at the seat

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[25] R. 119, Annual Report for 1954, p. 133.

[26] R. 130, "This is YOUR House Committee on Un-American Activities," p. 18.

[27] R. 164-165; 100 Cong. Rec. 11589 *et seq.*

[28] Carr, *op. cit. supra*, pp. 253-254: "First, it has been argued that the committee has shown little discretion or responsibility as to the kind of information or material it has allowed to be placed in its files. and second, the committee has been attacked for the irresponsible manner in which it has allowed its files to be used. There is much justification for both criticisms.

"The files are a voluminous mass of miscellaneous, undigested materials and information pertaining to thousands of organizations and perhaps one million individuals. Physically, the file material is of two types: a card index consisting of hundreds of thousands of entries, and a very much smaller number of folders containing exhibits and source materials. A typical card carries the name of a person and makes a brief reference to some activity or organizational affiliation viewed as suspicious or questionable by the research or investigative divisions of the staff."

Senator Mundt, a former active member of the Committee, has remarked that the Committee has five rooms of files on un-American activities. Comment, *Legislative Inquiry into Political Activity*, 65 Yale L.J. 1159, 1162 n. 17.

of Government (R. 44, 116). The Committee's interest in "identifying" at the place of residence so as to bring maximum public attention to those being identified goes so far that it will sometimes call the same identifying witness a number of times in a number of different cities so as to achieve this result. See, for example, the appearance of Mrs. Hartle in both Portland and Seattle (R. 113-114, *Annual Report for 1954*, pp. 18-19); the appearance of Bella Dodd and Dorothy K. Funn in New York and Philadelphia (R. 116, *Annual Report for 1953*, pp. 57, 100).

3. *Listing*

Subsequent to the formal identification in a public session of the Committee comes the public listing of the identified individual. The annual report of a Standing Committee of the House is generally intended to inform the House of the facts necessary for the latter to exercise its legislative powers; in the case of this Committee, the recent reports have been largely a compilation of names of individuals with no effort to weigh the nature or character of their activities, past or present, or the relevance of the evidence concerning them to any legislative purpose. In the Report for 1953, 59 pages of a total 133 were devoted to listing the names and addresses of individuals who had been named before the Committee as present or former members of the Communist Party. The prior report for 1952 had utilized 54 out of 89 pages for the same purpose.[29]

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[29] The Annual Report for 1954, issued March 1955, omitted this personalized listing, possibly in response to the extensive criticism of the Committee on this point. But the emphasis on identification as the Committee's function had not changed. See R. 113, Annual Report for 1954, pp. 14, 17. This emphasis on identification was continued in the Annual Report for 1955. H. Rep. No. 1648, 84th Cong., 2nd Sess., pp. 1-3, 6, 7.

4. *Dissemination*

The Committee's view of its function and power as being one of exposure to public scorn and retribution appears concretely through its emphasis on dissemination of the lists and identifications which it has gathered. In a recent pamphlet which was intended to describe its operations and silence its critics, the Committee pointed out:

> "This committee and the special committee have over the past 16 years held hundreds of hearings and issued and distributed throughout the United States hundreds of thousands of reports exposing the operations of the Communist Party and its fronts" (R. 130, *This is YOUR House Committee on Un-American Activities*, p. 25).

Getting the information to the public is the aim and very heart of the process of exposure. Over the years the Committee perfected publicity techniques designed to reach the maximum number of people with maximum impact. Comment, *Legislative Inquiry into Political Activity*, 65 Yale L. J. 1159, 1161; Cushman, *Civil Liberties in the United States* (1956) pp. 195-196. In the course of the series of hearings at which petitioner testified, the Chairman stated:

> "Of course, we have had a great many hearings all throughout the country dealing with the subject of communism and the labor union movement. We have had a lot of our hearings printed, pamphlets, so that members in the Communist-dominated unions should know that we have the information and should be willing to read the information that is furnished free of charge in most instances by the Federal Government." [30]

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[30] R. 149, Hearings, Investigation of Communist Activities in Chicago Area (1954), Part 2, p. 4255.

These statements on the dissemination of information to the public must be read with the constant remembrance that the reports and hearings to which reference is made consist in major part of names, addresses and lists of individuals. It is that type of information which the Committee is desirous of putting into the hands of the public.[31]

5. *Clearance—or Judgment of Guilty*

While the judgment of the guilt or innocence of an individual has traditionally in our Government been the function of the Judiciary, and perhaps, for limited purposes, of quasi-judicial officers of the Executive branch, the determination of individual guilt or innocence of past or present Communist affiliation has been considered by the Committee to be an integral part of its exposure function. It demonstrates this in many ways: in its reiterated invitations to persons and organizations to "deny or explain" testimony given about them;[32] in its issuance to a research organization of an official "clearance";[33] and to a labor union of a finding of not guilty of being a Communist-front organization which reads like a judicial decree;[34] in its issuance of a finding that an individual was "not quali-

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[31] The Guide to Subversive Organizations, which the Committee publishes in up-to-date form from time to time, is another type of *list* which the Committee distributes wholesale.

[32] R. 116, Annual Report for 1953, pp. 60, 99; R. 124, Annual Report for 1951, p. 1; see also Annual Report for 1955, H. Rep. No. 1648, 84th Cong., 2nd Sess., p. 12.

[33] R. 117, Annual Report for 1953, p. 127; R. 172, New York Times, February 7, 1954.

[34] "Upon request of the officers of this union a subcommittee of this committee, on August 17, 1950, heard the testimony of Mr. Martin Wagner, President of the organization. From this evidence the committee finds:

"(1) the United Gas, Coke and Chemical Workers of America has taken energetic and effective measures to eliminate such influence.

"(2) All persons against whom substantial evidence of Communist ac-

fied for acceptability to any security position";[35] and in its determination to keep confidential an investigation because the suspected person has died.[36]

Clearance is the exception; guilt is the rule. Identification before the Committee automatically establishes the guilt and the guilty one's name is published in the lists of the Committee for all the world to see. This judgment stands unless and until counteracted by what the Committee, sitting as judge, considers as "genuine" evidence of mistake or repentance; then the Committee will amend its records.[37]

6. *Public Retribution*

The exposure operation would not be complete were not some results in the form of sanctions obtained from the identification and listing of individuals and the dissemina-

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tivities or views exists in the records of the Committee on Un-American Activities, have been removed as officers.

"(3) The charters of local unions found by the parent organization to be following the Communist Party line have been revoked.

"(4) According to a constitutional amendment adopted by the union, no person who is a member of a Communist, Nazi, or Fascist organization may be a member of the executive board or an employee of this union.

"Upon this testimony, the Committee on Un-American Activities has adopted a resolution providing:

"(1) The name of the UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA shall be dropped from future editions of the committee pamphlet '100 Things You Should Know About Communism.'

"(2) No additional copies of the present issue of any committee publication containing reference to this union shall be issued without notation that the statement about the union is no longer true.

"(3) Any statement by any person to the effect that this committee now finds that the UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA under its present officers and bylaws, to be under Communist influence or leadership, is unauthorized and untrue.

"(4) That a copy hereof, over the signature of the committee chairman shall be furnished the union." (R. 131-133, 100 Things You Should Know About Communism, p. 125.)

[35] R. 123, Dr. Condon, Annual Report for 1952, p. 74.

[36] R. 126, Agnes Smedley, Annual Report for 1950, p. 4.

[37] R. 129, Annual Report for 1949, p. 46.

tion of their names to the public. No attempt to conceal the hope that some form of social or economic sanction will result from its activities is made by the Committee. Perhaps the frankest statement concerning the object of the Committee's exposure system was made a few months after petitioner's appearance, by Representative Walter, then the ranking Democratic member of the Committee in the 83rd Congress and now its Chairman:

> "Rep. Francis E. Walter (D., Pa.) who will take charge in the new Congress of House activities against communists and their sympathizers, has a new plan for driving Reds out of important industries. He said today he plans to hold large public hearings in industrial communities where subversives are known to be operating, and to give known or suspected commies a chance in a full glare of publicity to deny or affirm their connection with a revolutionary conspiracy—or to take shelter behind constitutional amendments.
>
> " 'By this means,' he said, 'active communists will be exposed before their neighbors and fellow workers, and I have every confidence that the loyal Americans who work with them will do the rest of the job.' " [38]

Industries or institutions which "clean house" to the liking of the Committee are praised;[39] those which do not do so are castigated.[40] Threats of deportation are made when aliens claim the privilege of the Fifth Amendment.[41] Gratification is expressed when those whom the Committee

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[38] R. 174, Washington Daily News, November 19, 1954. See also Carr *op. cit. supra*, p. 452. "It [the Committee] also had the much more simple goal of driving men from their jobs."

[39] R. 163, Hearings, Communist Methods of Infiltration (Education—Part 2), p. 221; R. 121, Annual Report for 1952, pp. 8, 12.

[40] R. 124, 125, Annual Report for 1951, pp. 2, 16.

[41] R. 173, New York Times, July 16, 1954.

has exposed are released from their employment,[42] or otherwise socially punished[43] as by expulsion from their union.[44] Unions are urged to expose the Communists and seek their prosecution.[45] The Committee has not exhorted in vain; these hoped-for results of social and economic sanctions have been forthcoming for thousands of individuals. Committee trials have in fact resulted in "punishment".[46]

* * * * *

"The committee's search for information that might lead to the enactment of laws—either the revision of existing laws dealing with espionage and sedition or the passing of entirely new statutes in this area—has been the slightest of all its interests through the years. Occasionally its interest in checking the work of administrative agencies, particularly that of the Department of Justice, has been substantial. But always its interest in public opinion has been paramount. Always the committee has been concerned lest the American people fail to share its understanding of the nature of subversive activity and the many forms it may take, or appreciate the seriousness of the threat offered by this activity to the 'American way of life' as seen by itself."[47]

As we have just shown, the Committee has asserted the power to expose individuals to public scorn and retribution.

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[42] R. 112, 113, Annual Report for 1954, pp. 7, 17; R. 115, Annual Report for 1953, p. 4.

[43] The fact of blacklisting in entire industries is a notorious consequence of exposure. Cogley, *Report on Blacklisting* (1956).

[44] R. 121, Annual Report for 1952, pp. 8, 12.

[45] R. 131, *100 Things You Should Know About Communism*, p. 76.

[46] Carr, *op. cit. supra*, p. 452-453. The commercial results of the emphasis on identification and listing by the Committee are described in Cushman, *op. cit. supra*, pp. 203-204.

[47] Carr, *op. cit. supra*, p. 272.

in committee hearings and reports, on the floor of Congress and in the public press. It has acted on this asserted power in thousands of cases. For this Court to fail to recognize that the Committee asserts an independent power of exposure, it "would have to be that 'blind' court against which Mr. Chief Justice Taft admonished in a famous passage, *Bailey* v. *Drexel Furniture Co.* (Child Labor Tax Case) 259 U. S. 20, 37, that does not see what all 'others can see and understand' . . ." *United States* v. *Rumely*, 345 U. S. 41, 44.

B. *The Committee, by its Questioning of Petitioner and Colloquies With Him, Evidenced an Unmistakable Purpose of Exposure Apart from and Unrelated to any Legislative Purpose*

Numerous attacks have been made on the Committee on Un-American Activities to the effect that its sole purpose is to expose individuals to scorn and retribution. We make no such broadside charge; indeed, we make no charge whatever. The official statements as well as the Committee actions which we have set out above demonstrate that the Committee has interpreted its assignment to include the exposure of individuals in addition to the committee business of recommending or commenting on legislation.[48] We accept the Committee's own interpretation of its functions and thus reach the basic question in the case: In which part of its two-pronged task was the Committee engaged when it asked petitioner the questions which form the basis of his indictment? Were its questions in aid of legislation or were they for the purpose of exposing petitioner through

[48] The Government suggests in its Brief in Opposition (p. 19) that petitioner is seeking to delve into some "ulterior motive claimed to exist within the minds of the legislators." But it would hardly seem to be proof of an ulterior motive to demonstrate that the Committee was acting in pursuance of its *asserted* separate and independent power of exposure. As the dissenting judges below put it: "No one's motives are impugned by showing the Committee's concept of its duty" (R. 196, n. 13).

his own mouth and of exposing the others about whom he was asked through petitioner's testimony? The Committee itself, by what it did and what it did not ask petitioner and by its colloquies with petitioner, provides the answer to this question: its purpose was, beyond doubt, one of exposure.

Petitioner appeared before the Committee on April 29, 1954. Immediately after perfunctory questions relating to his background were completed, counsel for the Committee launched into the meat of the hearing (R. 73). He read testimony from Donald O. Spencer, given in September 1952, concerning petitioner's involvement with the Communist Party and asked petitioner about the Spencer statement (R. 73). Petitioner denied the truth of Spencer's testimony (R. 73-75). Counsel then pressed petitioner on Spencer's testimony concerning petitioner, at which point petitioner made the following statement (R. 75):

> "I am not now nor have I ever been a card-carrying member of the Communist Party. Rumsey was wrong when he said I had recruited him into the party, that I had received his dues, that I paid dues to him and that I used the alias Sam Brown.
>
> "Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings.
>
> "I would like to make it clear that for a period of time from approximately 1942 to 1947 I cooperated with the Communist Party and participated in Communist activities to such a degree that some persons may honestly believe that I was a member of the party.
>
> "I have made contributions upon occasions to Communist causes. I have signed petitions for Communist causes. I attended caucuses at an FE convention at which Communist Party officials were present.
>
> "Since I freely cooperated with the Communist Party I have no motive for making the distinction

between cooperation and membership except the simple fact that it is the truth. I never carried a Communist Party card. I never accepted discipline and indeed on several occasions I opposed their position.

"In a special convention held in the summer of 1947 I led the fight for compliance with the Taft-Hartley Act by the FE-CIO International Union. This fight became so bitter that it ended any possibility of future cooperation."

Petitioner was then questioned briefly about the extent of his personal cooperation with the Party. The Committee did not then or later delve into the mechanics of cooperation within the union between this non-Party labor leader and the Party either during the period of his cooperation with the Party or after the "fight became so bitter that it ended any possibility of future cooperation" (R. 75). The Committee did not ask one further question about the details of the internal fight about compliance with the non-Communist oath provision of the Taft-Hartley Act to which petitioner referred in his testimony and which surely would have been of great significance to the Committee if it had been considering any legislation in the field of Communist infiltration of trade unions. Nor did the Committee ask petitioner a single question about the effect of this Taft-Hartley Act provision or of the later Internal Security Act of 1950 upon Communist activities in the labor movement or any questions relating to the strengthening of either of those laws—questions which would have been of vital significance to the Committee if it had been considering legislation to strengthen either law.

The questioning then moved into the Rumsey testimony concerning petitioner's alleged Party membership. Petitioner denied Rumsey's allegations, stating that possibly

Rumsey was biased against him because petitioner had caused his expulsion from a union (R. 77-78).

The Chairman then returned to petitioner's participation in Communist Party activities. He did not question petitioner about what was discussed at any meetings; he did not question petitioner about how the Communist Party worked with non-Party labor leaders; he did not ask about the effect of any existing or proposed legislation. He asked, "... with *whom* did you participate ..." in these activities (R. 80)? After this question was answered, Mr. Velde continued in his search for names: "All right. Will you proceed, then, with *others* that you have participated with in Communist Party activity" (R. 80)? Again petitioner answered the question.

After a short recess, counsel returned to the Rumsey testimony and petitioner repeated his earlier testimony (R. 82-84). Then, without interrogating petitioner about his union activities, or about the effect on them of his cooperation with the Communist Party before 1947 and his opposition to it after 1947, the Committee counsel immediately went into wholesale identification (R. 84-85):

> "Mr. Kunzig: Now, I have here a list of names of people, all of whom were identified as Communist Party members by Mr. Rumsey during his recent testimony in Chicago. I am asking you first whether you know these people."

Petitioner did not know the first few (R. 85); at the next name, that of Harold Fisher (first count of the indictment), Mr. Kunzig asked whether petitioner knew Fisher to be a member of the Communist Party.[49] Petitioner then made his

[49] With respect to all except two persons, Harold Fisher (Count One) and Ernest DeMaio (Count Four) the questions asked petitioner were about past membership. In the cases of Harold Fisher and Ernest DeMaio the questions were couched in the present tense. It seems clear, however,

statement, which he had carefully prepared in anticipation of this line of questioning, telling the Committee that he would answer all questions about himself, that he would answer questions about people he knew to be members of the Communist Party and who he believes still are, that he would not answer about people who once had been but no longer were Communist Party members, and that he did not believe the Committee had authority to ask about past political associations and to undertake the public exposure of persons (R. 85-86). The Chairman directed the witness to answer the question, stating that the Committee has authority "to ask you . . . concerning your knowledge of any other persons . . . who have been members of the Communist Party . . ." (R. 86). Then counsel went through his prepared list and asked the witness whether he had known each of the named persons to be members of the Communist Party, ending with a question containing a long list of 26 names (count seven of the indictment). Petitioner interrupted his refusals to answer, in accordance with the

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that what the Committee was after was petitioner's knowledge of the past membership of the 29 persons involved. In view of the earlier testimony by Rumsey and Spencer, who set the dates of petitioner's alleged party affiliation from 1943-46 (R. 136-137, 154), and petitioner's own uncontradicted statement that he had ceased any form of cooperation with the Communists in 1947 (R. 75), there can be no doubt that the Committee was questioning petitioner about past political associations. At any rate, if the Committee was seeking information about present membership, petitioner answered the questions. Petitioner stated that he would "answer questions about persons whom I knew to be members of the Communist Party and whom I believe still are" (R. 85), and would only refuse to answer about those who had "long since removed themselves from the Communist movement" (R. 85). Indeed, in implementing this principle, petitioner extracted the name Joseph Stern from a long list of names and answered affirmatively about Stern's present membership. Consequently, when petitioner replied to any question about present membership by standing on his statement, he was in effect denying that he knew the particular individual to be a present member and refusing to answer about past membership. *All petitioner ever refused to do was to answer about past membership of others.* This position was accepted both by the majority opinion below (R. 178) and the minority (R. 187, n. 2).

principle he had announced that he would identify persons he believed still to be members of the Party, and stated that Joseph Stern, one of the names in the long list of names, had "carried on Communist Party activities in the Quad City area" (R. 90). Counsel did not follow up on this; no attempt was made to obtain relevant information about Joseph Stern's activities in the labor movement.

When counsel had completed his list, and the witness once again had been directed to answer, the Chairman of the Committee said (R. 90-91):

> "It seems very clear to me that the witness has pertinent information concerning Communist Party activities which we are authorized and dutybound to investigate, and that the witness should in the spirit of cooperation with his Government answer those questions.
>
> "However, upon his refusal to answer those questions, there is nothing we can do at the present time to force the witness to answer those questions."[50]

The Committee had before it a witness who had been in the labor movement for 18 years. He admitted that he had cooperated with the Communists for five years; that he had been involved in a bitter internal struggle with them. He was an expert on the actual workings of Communism in the labor movement. He did not claim the Fifth Amendment; he did not refuse to testify; he was not a recalcitrant witness. He was respectful to the Committee and ready to do

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[50] In no way did the Committee or the Committee's counsel indicate, as is usual in a court of law when the immediate relevancy of certain questions is not apparent, that the questions would illuminate or have a bearing on the nature or motivation of a course of conduct or pattern of conduct to be established, which would be relevant to the consideration of any legislation or legislative problems. *In no way did the Committee or the Committee's counsel attempt to rebut petitioner's assertion that the Committee was undertaking "the public exposure of persons because of their past activities"* (R. 85).

his duty as a citizen. To the Committee, however, that duty was solely to elaborate publicly on his own involvement with the Communist Party and to identify publicly as members of the Communist Party 30 people who had already been identified by at least one, and in most instances, two people. The Committee did not want the benefit of petitioner's experiences as they related to Communist techniques in labor unions; it did not want the benefit of petitioner's informed opinion about Communist operations in the labor field or the effect of existing or pending legislation upon those operations. The Committee demanded only that petitioner point the finger publicly at himself and at a group of private persons whom he had known some ten years before. Nothing in the way of *ex post facto* legislative window-dressing or explanations that the questioning of petitioner *could* have had a legislative purpose can stand up against the stark facts of what the Committee wanted to know, and what the Committee was not at all concerned to know. The sole purpose of the questions underlying petitioner's indictment was the public exposure of 30 individuals.

C. *The Committee Had Available to it in its Own Files, Which it Failed Even to Examine Before Subpoenaing Petitioner, the Information Which it Sought to Elicit From Petitioner*

Petitioner sought to prove in the trial court that the Committee actually had the information about himself and the 30 individuals which it attempted to extract from petitioner in a public hearing and that therefore the Committee's purpose in forcing him to testify was to publicly expose him and these 30 individuals rather than a bona fide effort to obtain the testimony of the petitioner in aid of legislation. To this end, petitioner served upon the Clerks of the Committee and of the House of Representatives identical sub-

poenas calling for all the information in the possession of the Committee relating to petitioner and the persons named in the questions set out in the indictment. Despite the fact that petitioner made out a *prima facie* case of exposure by proof that the Committee asserted an independent power of exposure (pp. 41-58, *supra*) and that the questioning of petitioner itself demonstrated that the Committee was acting under that asserted independent power of exposure here (pp. 58-64, *supra*), the District Court nevertheless ruled that the subpoenaed documents were not relevant to the issues in the case (R. 19). In effect, what the District Court held was that one indicted for contempt of a Committee would not be permitted to prove that the Committee was engaged in exposure rather than in investigation in aid of legislation.

The subpoenas having been quashed, petitioner offered to prove in the trial court, through the material which was described in the subpoenas, that the Committee "had in its files all the information which it sought to elicit from the defendant about him and each of the other 30 individuals referred to and, in fact, a great deal more such information" (R. 58). In connection with this offer of proof, petitioner submitted the extensive references to these 30 individuals which were to be found in the Committee's public reports and hearings (R. 94-109). While these references were many and varied, they were but a minute part of the total sum of knowledge which the Committee had about the list of names which was read to petitioner. According to government counsel, the Clerk of the Committee informed him that the material was so voluminous that it would take three analysts two weeks to assemble it, and a truck to bring it to the courthouse (R. 46-47). If the Committee's purpose was to inform itself, and through itself the Congress, on matters in aid of legislation, it surely had no need to require petitioner to come

from his home and place of employment merely to identify and expose individuals about whom the Committee had more information than the petitioner had or was questioned about. The calling and public questioning of petitioner under the circumstances of full prior knowledge on the part of the Committee is itself a demonstration that the Committee was performing its exposure function and not its legislative function in this line of questioning. Taken together with the Committee's asserted power of exposure and its lack of interest or concern in questioning petitioner along any except exposure lines, the demonstration is overwhelming.

The testimony of Committee counsel makes it clear that the Committee had no settled practice with respect to prior search of its own files before using compulsory process to obtain information (R. 49-51). The ironic fact is that, although it maintained voluminous files (p. 50, *supra*), boasted of its "comprehensive records" concerning "individuals",[51] and pointed out the effect of their use in arguing for its annual appropriation,[52] the Committee failed to exhaust the possibilities in those files in order to save a citizen the expense, inconvenience and adverse publicity of coming to testify, under compulsory process, about what the Committee already knew. Obviously petitioner was called not to give testimony relevant to a legislative purpose, but to play the role assigned to him by the Committee in its staging of the public identification of individuals.

The testimony of Committee counsel as to whether the files had been consulted at all in this case was evasive and inconclusive, and, consistent with the District Court's apparent position that proof of exposure was irrelevant (R. 19), petitioner was not permitted to probe fully into his

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[51] R. 128, Annual Report for 1949, p. 18

[52] R. 168, 100 Cong. Rec. 2173.

claimed lack of memory on this point (R. 51). Even so, counsel's testimony boils down to a statement that counsel was always briefed by investigators prior to a hearing; that therefore it must have been done in this case; that he would know what the investigators told him "but whether that was all the information in the Committee's files, I wouldn't know, because I don't know what is in the mind of the investigator" (R. 52). Mr. Kunzig carefully refrained from stating that he or anybody else made an exhaustive search of the files which the Government states would take three analysts two weeks just to assemble; it is clear that Mr. Kunzig could not have been given all the information in the files of the Committee, for if he had been given the information contained in a truckload of papers, as recently as a year before, he most certainly would have remembered the fact of receiving the information even if not its contents.[53] The Committee not only did not know what it had in its files; it did not care.

The Committee clearly should have searched its files before calling or questioning petitioner. Its failure to do so and its insistence on petitioner's public testimony without knowing or caring about the extensive prior information it had obtained is further proof, if any be needed, that the Committee was engaged in exposure rather than investigation in aid of legislation in its questioning of petitioner.

The Committee apparently utilizes its files for all purposes except to avoid use of compulsory process against one whom it seeks to expose and through whom it seeks to expose others. The Committee, for example, utilizes its files

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[53] If even a cursory search of the files had been made, the duplication and misspelling of names in the questioning and indictment would have been avoided. E.g., Lee Landbaker for Leland Baker; Herb Marsh for Herb March; Charles Hobbe for Charles Hobbie; duplication of Marie Wilson and Mrs. John Wilson (R. 100, 102, 99, 109).

to answer thousands of requests yearly from Congressmen (R. 119, *Annual Report for 1953*, p. 133). The Committee utilizes its files on occasion even to answer "requests made by private individuals who show a sincere and genuine need for information . . ." (R. 123-124; *Annual Report for 1952*, p. 78; see also Cushman, *op. cit. supra*, p. 197). Its failure to use its files before calling petitioner only reinforces the overwhelming proof already made in this case that the Committee was not seeking information at all but was engaging in its asserted power of exposure.

We do not suggest that the Committee was without authority to obtain corroborative evidence relevant to a legislative matter.[54] Nor do we suggest that the Committee was without authority to compel oral testimony on a legislative matter simply because it already had some information in its files concerning that matter. What we do maintain is that the "truckload" of information in the Committee files concerning petitioner and the persons about whom he was asked and the failure of the Committee to make a thorough review of this truckload of information before calling petitioner is added evidence that the Committee's sole concern was to use petitioner as a vehicle of its policy of public exposure. When taken together with the other evidence to this effect already reviewed in this brief, there can be little doubt that the Committee was questioning petitioner solely in aid of its asserted power of exposure.

A Committee which exercises its power of compulsory process to bring a citizen to testify before it without even making a thorough review of the truckload of information in its own files is exceeding its Constitutional power in another respect. It is not acting with the "least possible

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[54] It might be noted here that, when petitioner challenged the authority of the Committee (R. 85), no suggestion was made that the information sought from petitioner was desired as corroborative evidence for any purpose, much less a legislative purpose (R. 86, 90-91).

power." *Anderson* v. *Dunn*, 6 Wheat. 204, 231; *Marshall* v. *Gordon*, 243 U.S. 521, 541. This limitation has been explained as follows:

> "A court, for example, has no general authority to force witnesses to testify; it has the power to do so only when the witness' testimony is needed to help dispose of the controversy which the court is called upon to determine. Equally, the investigative power of Congress or any other legislature extends only to matters which bear an intelligible relation to the legislative function. Respect for privacy and the rights of individuals against oppressive inquisition are fundamental to our way of life; the inroads of investigations must be limited to what is necessary to give the legislature the information it needs in order to discharge its functions. 'The least possible power adequate to the end proposed' is the touchstone in determining whether an individual may be compelled to reveal matters otherwise private and protected from public disclosure."[55]

We do not suggest the precise meaning to be given to the "least-possible-power" limitation. It probably does not prevent a congressional committee from procuring corroborating testimony on matters of substantial importance. It probably does not prevent the compulsory procuring of a wide range of opinions and experience on a matter of significance. But we think the "least-possible-power" rule has no meaning at all if it does not prevent a committee which has extensive information in its possession on the long-past affiliations of a group of individuals from forcing another individual to repeat publicly, under threat of criminal prosecution, what the committee already has in its files.

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[55] Taylor, *Grand Inquest* (1955), p. 57.

D. *The Majority of the Court Below Erred in Failing to Consider Petitioner's Proof of Exposure*

Petitioner made these same three arguments on exposure —(A) that the Committee asserted an independent power of exposure, (B) that the Committee's questioning of petitioner and colloquies with him demonstrated an unmistakable purpose of exposure, and (C) that the Committee had available in its files, which it failed to examine, the information it sought from petitioner—in both the trial court and the court below. The District Court refused to admit petitioner's evidence under arguments (A) and (C) and to consider the evidence under (B). The court below summarily rejected petitioner's contention under (A) with the comment that petitioner's proof of the Committee's assertion of the power of exposure "is not evidence" (see pp. 42-43, *supra*); it gave arguments (B) and (C) a silent rejection.

The majority below thus refused to consider the evidence of exposure presented by petitioner and to pass on the fundamental issues raised. Instead, the majority opinion below seems to hold (i) that there *could* always be a valid legislative purpose in a congressional committee asking witnesses whether certain persons had once been members of the Communist Party and (ii) that, therefore, since there *could* have been a valid legislative purpose, proof that there was in fact no valid legislative purpose in particular questions, but only a purpose to expose, does not invalidate congressional committee action. In this vein, the majority opinion states (R. 178):

> " . . . A majority of the court is of opinion that Congress has power to investigate the history of the Communist Party and to ask the questions Watkins refused to answer. It would be quite in order for Con-

gress to authorize a committee to investigate the rate of growth or decline of the Communist Party, and so its numerical strength at various times, as part of an inquiry into the extent of the menace it poses and the legislative means that may be appropriate for dealing with that menace.[56] Inquiry whether thirty persons were Communists between 1942 and 1947 would be pertinent to such an investigation. The questions asked Watkins *could* be asked for a valid legislative purpose." (Emphasis supplied.)

Nowhere does the majority opinion deal with the issue whether the questions asked Watkins were in fact asked for a valid legislative purpose; the entire emphasis, as indicated in the quotation above, is that "the questions asked Watkins *could* be asked for a valid legislative purpose." Thus, the majority opinion, after quoting the opening statement of the Chairman of the Committee many weeks before petitioner testified, states that "the purpose of the Committee's hearing was to aid it [the Committee] in its study of a proposed amendment to the Internal Security Act of 1950." (R. 181)[57] Here again the majority opinion is

[56] All apart from the fact that this information was already available to the Committee from the Federal Bureau of Investigation's regular yearly reports to the Congress on the membership of the Communist Party, the questioning of petitioner itself negatives any such purpose on the part of the Committee. Nowhere did the Committee ask petitioner for the names of other Communists in his union or for any estimate of the total number of Communists. Nowhere was it suggested that the question under inquiry concerned "the history of the Communist Party" or the "rate of growth or decline of the Communist Party." All the Committee wanted was petitioner's testimony concerning particular persons whom it desired to expose.

[57] The bill to which the Chairman apparently referred in his opening statement quoted by the court below was one to amend the Internal Security Act of 1950 to deprive Communist-infiltrated labor unions of the use of the National Labor Relations Board. The bill pending at the time of the Chairman's statement and of petitioner's appearance was H.R. 7487, 100 Cong. Rec. 763. No hearings were held or other action ever

dealing in the realm of what *could be,* not what *was.* The fact that the Chairman of the Committee referred to a proposed amendment to existing legislation in the course of a lengthy, *pro forma* opening speech many weeks (R. 43-44) and many witnesses before petitioner testified, hardly demonstrates that the purpose of the particular questions petitioner refused to answer was to elicit information about this amendment.

In fact the proof is clearly to the contrary.[*] Immediately after the opening statement in Chicago, which included the passing reference to the bill (R. 44) upon which the court below relied, the Committee took testimony from six witnesses on the Federal employee security program and various college and farm activities. *Investigation of Communist Activities in the Chicago Area—Parts 1 and 2. Hearings before the Committee on Un-American Activities,* House of Representatives, 83rd Cong., 2d Sess. When petitioner finally testified, no questions were asked him in any way relating to the amendment which is now offered as justification for petitioner's questioning, or any other. The Committee's failure, for example, to question petitioner about the matter of compliance with

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taken on this bill. Subsequently Congressman Reed of Illinois introduced H. J. Res. 528, 100 Cong. Rec. 6705, another bill dealing with Communist-infiltrated labor unions; hearings were held on this bill by the House Judiciary Committee, but an adverse report was filed on the ground that the Committee did not possess sufficient information. H. Rep. No. 2280, 83rd Cong., 2d Sess., p. 3. On July 6, 1954, the Senate Judiciary Committee reported favorably on S. 3706, a bill to provide for hearings on and penalties for Communist-infiltrated labor organizations. Two days later, on July 8, 1954, two-and-a-half months after petitioner's hearing, Congressman Velde introduced H. R. 9838, a bill identical with S. 3706, and it was this bill which was reported out on August 9, 1954 (H. Rep. No. 2651, 83rd Cong., 2d Sess.), and became law on August 24th as part of the Communist Control Act of 1954. P. L. 637, 68 Stat. 775, 50 U.S.C. 781, 792a. As indicated in the body, the evidence in this case makes clear that the questioning of petitioner had nothing whatever to do with the bill that was then pending before the Committee or the bill introduced later, which was finally enacted.

the Taft-Hartley Act, after petitioner himself brought this matter before the Committee (R. 75), is particularly significant, for the bill in question dealt with the same general subject-matter of Communist infiltration of labor unions. But, as the dissenting opinion pointed out, what the Committee wanted was the identification of persons who may have been Communists before that time, not to discover whether the Taft-Hartley Act "is adequate or requires strengthening," which would have been relevant to the proposed bill (R. 192). When petitioner challenged the Committee's action as one of exposure (R. 86), the answer that came from the Committee was not that the desired testimony was relevant to any bill concerning Communist infiltration into labor unions or otherwise, but simply a veiled and not too subtle assertion of the power of exposure (see pp. 62-63, *supra*). Furthermore, the Committee report on the bill to which the court below refers did not claim there had been any hearings on the bill (H. Rep. No. 2651, 83d Cong., 2d Sess.); the minority report stated categorically that no hearings had been held. H. Rep. 2651, Part 2, 83rd Cong., 2d Sess. One of this minority who stated that no hearings had been held, Congressman Frazier, was present at petitioner's interrogation (R. 70) and would have been in a position to know if the questioning had been directed in any way at the amendment to the Internal Security Act.[58]

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[58] One other argument by the court below is worth noting. "Having volunteered an attack on the credibility of a prior witness," wrote the majority below, "appellant could not later refuse to answer questions concerning Communist Party membership of other union associates of appellant and of the prior witness on the ground that this particular phase of testimony was beyond the scope of the Committee's investigating power." (R. 184). But petitioner volunteered nothing. He was subpoenaed to testify at a hearing before the Committee on Un-American Activities. Two earlier witnesses before that same Committee had accused him of being a member of the Communist Party and, rejecting the shield of the Fifth Amendment (R. 85), he intended to testify to

Thus, what we have here is the Committee Chairman's passing reference to a pending bill in a catalog of enacted and pending legislation enumerated by the Chairman as part of a formal opening statement to a set of hearings on a diversity of subjects (see p. 72, *supra*). Then, many weeks later, petitioner was interrogated in a manner and under circumstances which make clear that the questions he refused to answer were not asked to elicit information concerning that pending bill. The reliance of the court below upon the Chairman's passing reference to the bill when the record clearly reveals that the examination of the petitioner was in no way related or pertinent to such bill, not only preferred form to substance, but put the court in the position of attributing to the Committee a purpose which it never claimed for itself. The court's action was clearly in the realm of what "could" have been, not what was.[59]

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the contrary. Because of the risk of a perjury charge in view of the testimony of two adverse witnesses, he had prepared a careful statement setting forth the facts as he remembered them (R. 37, 39-40, 74-75). After Committee counsel had interrogated petitioner about Spencer's testimony against him, which included Rumsey's participation in Communist activities, and was about to go into Rumsey's testimony (R. 73-77), petitioner read his prepared statement to the Committee (R. 75). It volunteered nothing; it did not attack the credibility of Rumsey and Spencer other than to deny their testimony concerning petitioner's alleged membership in the Communist Party. Petitioner's efforts to defend himself against a charge of perjury, when being forced to testify under subpoena, is hardly a "voluntary" attack upon the credibility of anyone or a waiver of his right to refuse to proceed further. Furthermore, since the issue here is one of legislative authority and jurisdiction rather than self-incrimination (*cf. Rogers* v. *United States*, 340 U.S. 367), the question of waiver does not arise. *Cf. United States* v. *Corrick*, 298 U.S. 435; *Minnesota* v. *Northern Securities Co.*, 194 U.S. 48, 62.

[59] The court below cited no authority, nor has any been adduced by counsel for either party, in support of the "could be" theory of Congressional investigative power. Since no court has directly held that the question was what a committee could have been doing, not what it was doing, it has been somewhat difficult to find opposing authority. The Court's attention should be invited, however, to a recent district court decision on this very point. On April 19 1956, District Judge Richmond

Undoubtedly there may be instances in which it would be difficult to determine whether a congressional committee was interrogating a witness in order to procure information in aid of legislation or for exposure unrelated to any legislative purpose. But the difficulty of drawing a line in close cases should not deter this Court from its duty to state "where the individual's freedom ends and the State's power begins." *Thomas* v. *Collins*, 323 U.S. 516, 529. Certainly the instant case involving clear proof of exposure unrelated to a legislative purpose is a sound vehicle for a declaration that there is a field of exposure for exposure's sake which congressional committees may not lawfully enter.

The apparent holding of the court below—that the possibility that certain questions *could* have had a valid legislative purpose under certain circumstances was sufficient to justify Committee interrogation, whether or not such circumstances existed and in the face of proof of their nonexistence—renders academic and meaningless the authoritative decisions of this Court limiting the investigative power. If the ruling below stands, there will be no limits to the exposure powers of congressional committees for *ex post facto* legislative rationalization is always possible. If petitioner's showing of the Committee's purpose of exposure is not deemed adequate, we doubt that it can be made in any case. The Committee will hardly, in a proceeding likely to end in the courtroom, be more explicit in its purpose of exposure for the sake of exposure than it was here; *pro forma* opening statements listing past and pending bills can always be made in a further effort to turn a legislative

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B. Keech, in acquitting Aldo Icardi of perjury, stated that "if the Committee is not pursuing a bona fide legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal,' even though that very testimony be relevant to a matter which *could* be the subject of a valid legislative investigation." (Emphasis supplied.) *United States* v. *Icardi*, 140 F. Supp. 383, 388.

front to the courts while proclaiming the virtues of exposure to Congress and the public. We do not believe that the concern expressed (*United States* v. *Rumely*, 345 U. S. 41, 44) and limitations outlined (*Quinn* v. *United States*, 349 U. S. 155, 160-161) by this Court in recent opinions were intended to be academic and incapable of demonstration. Yet, if the showing made here is not deemed adequate, there can be no effective judicial limitations in the very field of inquiry where they are most needed.

III

The Questions Petitioner Refused to Answer Were Outside the Scope of the Committee's Authorization

A. *Introduction*

Counsel for petitioner recognize that, in presenting the constitutional argument concerning the Committee's purpose of "exposure" (Point I) and the factual support for that constitutional argument (Point II) prior to a consideration of the issue of statutory construction (Point III), they are following a somewhat unorthodox order of presentation. We have deemed this unorthodoxy justifiable for two reasons.

In the first place, we believe that the arguments presented in Points I and II have demonstrated beyond the possibility of successful rebuttal that a congressional committee may not constitutionally compel testimony for the sole purpose of exposure and that the Committee on Un-American Activities was seeking to do just that in its attempts to force answers to the questions addressed to petitioner. The fact that neither the trial nor appellate courts nor the Government has provided any direct refutation to Points I and II further convinces us of their undoubted validity. In contrast, the issue of statutory construction raises an extreme complex and difficult question of con-

gressional intent arising from possible ratification by the House of Representatives of the broad interpretation of the Committee's authorization, upon which the Committee has acted over the years with the knowledge of the members of the House. Counsel deemed it advisable to present first, and to place their primary reliance upon, what they believe to be their clearest and least refutable arguments.

In the second place, constitutional considerations will themselves affect the construction question, for they will determine whether the Committee's authorization should be given a broad or a narrow construction.[69] Thus, Chief Judge Edgerton and Circuit Judge Bazelon in their opinions below, both as the majority of the initial panel and minority of the full bench, first reviewed the evidence of exposure presented by petitioner (R. 190-196) and concluded that if "obliged to decide what the Committee's purpose was in asking the questions Watkins would not answer, we might be forced to conclude that the Committee asked them for the sole purpose of exposure" (R. 196). Having reached this conclusion, the dissenting judges below construed the authorization of the Committee narrowly (R. 196) in order to avoid the constitutional issues involved (*cf. United States* v. *Rumely*, 345 U. S. 41), and held that the authorization of the Committee, so construed, did not cover the questions petitioner refused to answer (R. 196-197).

Counsel for petitioner would have preferred, as a sheer matter of advocacy, to rely entirely on the clear-cut and overwhelming constitutional arguments against exposure. But we are mindful of our responsibility to this Court to give recognition to the doctrine that constitutional issues

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[69] Likewise, the factual demonstration of the Committee's exposure purpose (Point II) would bring the questioning outside the Committee's authorization if such purpose has not been ratified by the House. See pp. 80-82, *infra*.

are to be avoided when a case can properly and fairly be decided on a more limited basis (*Peters* v. *Hobby*, 349 U.S. 331; *Alma Motor Co.* v. *Timken Co.*, 329 U. S. 129), and to the closely related rules that statutes are to be construed so as to avoid constitutional doubts (*United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *United States* v. *C. I. O.*, 335 U. S. 106), or the attribution to Congress of an intent to sanction arbitrary or constitutionally questionable practices or procedures. *Cole* v. *Young*, 351 U. S. 536. We recognize, too, that these judicial rules of self-limitation have perhaps their greatest strength when the constitutional issues before the Court are as fundamental as those in the instant case. The questioning of petitioner raises far-reaching issues of the allocation of power between coordinate branches of the Government and difficult problems of the accommodation of the congressional power of investigation and the rights guaranteed by the First Amendment (see Point IV). In these circumstances the clarity of the constitutional argument and the complexity of the interpretative argument might not be deemed adequate reason by this Court for counsel's failure to brief and argue the question of statutory construction and the Court might well have requested such action on its own motion. *Cf. Peters* v. *Hobby*, 349 U. S. 331. We therefore deem it incumbent upon us to present to the Court the authorities and reasoning in support of the argument that the Committee has exceeded its own governing authorization in the instant case and that no legal ratification of the Committee's broad interpretation of its charter has ever been accomplished.[61]

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[61] The scope of the Committee's jurisdiction and the pertinency of the questions propounded to petitioner were raised by petitioner in the District Court (Tr. 187-190). Having lost in the District Court, petitioner conceded the authorization point in the original argument before the three-judge panel of the Court of Appeals in the belief that the ratification

B. *The Questions Petitioner Refused to Answer Do Not Fall Within the Language of the Committee's Authorization*

The substantive authority of the Committee on Un-American Activities of the House of Representatives is found in the following language:

> "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto *that would aid Congress in any necessary remedial legislation.*"[62] (Emphasis supplied.)

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argument was compelling. When the case was reargued before the Court of Appeals sitting *en banc*, petitioner, while relying primarily on the constitutional arguments, argued in support of Judge Edgerton's opinion that the authorization should be interpreted narrowly and that the questioning of petitioner was therefore beyond the Committee's authority. The majority of the full court explicitly decided that the questions asked petitioner were authorized by the resolution (R. 179). Petitioner in his Petition for a Writ of Certiorari framed the Questions Presented in constitutional terms, but concluded that, "whether proof of exposure be deemed a ground for so narrowly construing the resolution as to exclude the questions at which petitioner balked or be deemed a basis for holding the action of the Committee under the resolution beyond the powers of a Congressional Investigatory Committee, a clear-cut case of exposure has been made out here" (p. 33). In view of the traditional policy of this Court to avoid constitutional questions wherever possible, to which we have already adverted, we have decided to set forth for this Court the arguments supporting a construction of the authorization which would exclude the questions petitioner refused to answer.

[62] House Rule XI adopted by H. Res. 5, 99 Cong. Rec. 15, 18 (1953) represents the delegation of authority by the House of the 83rd Congress to the Committee on Un-American Activities. The substantive language of the relevant portion of the Rule is the same as that found in Section

Viewed as an exercise of the Committee's asserted power to expose (Point II), the questions petitioner refused to answer were outside this substantive authority. For, whatever its utmost scope and outer limits, the language of the resolution cannot be deemed to include a mandate to engage in exposure.

Certainly the language on its face contains no such grant of authority for there is no reference anywhere to "exposure." Nor is there any language from which a power to expose can be derived. On the contrary, the wording of the authorization negatives any such implied power. The Committee may investigate (i) the extent, character and objects of un-American propaganda activities, (ii) the diffusion of subversive and un-American propaganda and (iii) other questions in relation to (i) and (ii) "that would aid Congress in any necessary remedial legislation." We

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121(b) of the Legislative Reorganization Act, Chapter 753, 60 Stat. 812, 828 (1946) and in the amendment to the House Rules which made the Committee on Un-American Activities a permanent committee of the House. 91 Cong. Rec. 10, 79th Cong., 1st Sess. (1945). This language in turn derived from that of the original resolution creating the Special Committee to Investigate Un-American Activities, H. Res. 282, 83 Cong. Rec. 7568, 75th Cong., 3rd Sess. (1938). The successive resolutions, which continued the Special Committee, granted to it the "same power and authority" as that set out in the original resolution. H. Res. 26, 84 Cong. Rec. 1098, 76th Cong., 1st Sess. (1939); H. Res. 321, 86 Cong. Rec. 572, 76th Cong., 3rd Sess. (1940); H. Res. 90, 87 Cong. Rec. 886, 77th Cong., 1st Sess. (1941); H. Res. 420, 88 Cong. Rec. 2282, 77th Cong., 2d Sess. (1942); H. Res. 65, 89 Cong. Rec. 795, 78th Cong., 1st Sess. (1943). The last renewal operated for two years. The language of the resolution creating the Special Committee, familiarly known as the Dies Resolution, is similar to and modeled upon that of the so-called Dickstein Resolution, H. Res. 198, 78 Cong. Rec. 4934, 73rd Cong., 2d Sess. (1934). See pp. 82-84, *infra*. Thus, the present permanent Committee on Un-American Activities was preceded by the Special Committee to Investigate Un-American Activities. We will, in this brief, refer to the Committee as it existed during the period 1938-1945 as "the Special Committee."

Since the relevant language has been found successively in resolutions, a statute, and the House Rules, we refer to it generally as the Committee's "authorization."

read the quoted phrase as modifying the powers described in (i) and (ii) as well as in (iii), for any other reading "is to infer Congressional idiosyncrasy." *Keifer & Keifer* v. *R. F. C.*, 306 U.S. 381, 393. What possible reason would actuate the House to require that investigations of the subsidiary "other questions" under (iii) be limited to those that would have a connection with necessary remedial legislation, but to omit that requirement with respect to the primary subjects of investigation outlined under (i) and (ii)?

This analysis is fortified by statements of members of the House indicating that the intent of the House, in creating the Special Committee, was to procure the facts which would support legislation and not to authorize smear campaigns and similar exposure activities.[63] Congressman Healey, during the lengthy debates in 1939 when for the first time it was proposed to extend the life of the Special Committee, stated his position as follows (84 Cong. Rec. 1115):

> "Mr. Speaker, I urge the adoption of this resolution to continue the inquiry by this committee. And if it is so adopted, I hope that the House will make it plain that it desires the committee to eliminate the unnecessary showmanship, sensationalism, and 'appeal to the grandstand' that has done so much to impair the effectiveness of the committee's work and to buckle down to a serious and judicial factual investigation which may provide a sound basis for future action by Congress. [Applause.]"

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[63] See statements of Robsion, 83 Cong. Rec. 7584 (at the time the Special Committee was first authorized); Sabath, 84 Cong. Rec. 1102, Keller, 84 Cong. Rec. 1108, Hook, 84 Cong. Rec. 1114 (at the time the first renewal of the life of the Special Committee was being considered). Congressmen Healey, Sabath, and Robsion were in favor of the creation of the Special Committee; Congressmen Keller and Hook took the opposite view. Thus representatives of both the proponents and opponents of the original resolution agreed on this point.

The Committee's investigative authority would thus appear to be limited by its own terms to matters which would aid Congress in the consideration of remedial legislation and to exclude questions asked solely for exposure purposes. If (i) and (ii) are not so limited, the authorized investigations are of highly doubtful validity, for a contrary reading would require one to ascribe to the House an intention to encroach upon, or to come close to encroaching upon, areas forbidden to Congress by the Constitution. *Cf. United States* v. *C. I. O.*, 335 U.S. at 120. Such a dubious mandate is not to be read into the Committee's authority unless it is inescapably required by the language.

In a narrower sense, the questions upon which petitioner's conviction is based appear to be unauthorized by the language of the resolution, which is confined to propaganda and propaganda activities. The original intent of the House, to create a committee which would be concerned with investigations of propaganda activities, is evident from the fact that the language of the authorization is obviously modeled upon [64] that of the Dickstein resolution which had established the McCormack Committee in 1934. The changes in the language from that of the Dickstein resolution broaden the definition of the kinds of propaganda and propaganda activities to be investigated; they do not extend the limitation of the authority conferred beyond propaganda and propaganda activities. The discussion which preceded the adoption of the Dickstein resolution can thus

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[64] See 83 Cong. Rec. 7568-7586. The Dickstein resolution created a committee

> ". . . for the purpose of conducting an investigation of (1) the extent, character, and objects of Nazi propaganda activities in the United States, (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

illuminate the language under consideration; it reveals that the House at that time was interested in procuring information concerning foreign and particularly Nazi propaganda, and did not authorize any investigation beyond this limited and defined field[65]. Congressman Dickstein summarized the purpose of his resolution as follows (78 Cong. Rec. 4946):

> "This special investigating committee should seek to accomplish three primary objects: First, ascertain the facts about methods of introduction into this country of destructive, subversive propaganda originating from foreign countries; second, ascertain facts about organizations in this country that seem to be cooperating to spread this alien propaganda through their membership in this country; third, study and recommend to the House appropriate legislation which may correct existing facts and tend to prevent the recurrence of a similar condition in the future."

The report of the committee[66] appointed pursuant to this resolution ultimately resulted in the passage of the act requiring the registration of foreign propagandists. P. L. 583, 75th Cong., 3rd Sess., 52 Stat. 631. It is significant that Congress provided for identification of foreign propaganda agents by law, and did not regard such identification

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[65] References to subversive propaganda, foreign propoganda and Nazi propaganda and propagandists as the projected field of committee activity are frequent in the debates. See 78 Cong. Rec. 4934, 4937, 4938, 4940, 4944, 4945.

[66] H. Rep. No. 153, 74th Cong., 1st Sess. (1935). This report gave a factual description of the propaganda activities of various Nazi and Communist organizations and of some "native" propaganda organizations which were alleged to have been instigated from foreign countries. It contained no lists of individuals; it was not preoccupied with identification; it did not judge guilt or innocence. The report concluded with a number of specific legislative recommendations.

as the function of the Congress or any committtee thereof.

Consistent with its adoption of the substance of the Dickstein resolution, the House, when in 1938 it first authorized the Special Committee, indicated its great concern with the acceleration of "propaganda" activities, particularly those of the Bund.[67] Congressman Dies himself, in urging the adoption of the resolution, emphasized the existence of Bund activities. 83 Cong. Rec. 7568-7570. Congressman Eberharter stated that he was depending upon the Committee not to use its broad power for any other purpose than to ascertain the truth or falsity of the charges about propaganda (83 Cong. Rec. 7583).

Thus there is considerable evidence that it was the intent of the House in creating the Special Committee and in limiting its authority in the terms to which the Committee is still limited, to confine the Committee's investigation to propaganda and propaganda activities and not to extend such investigations to the political and organizational affiliations of individuals in years long past.

When the questioning of petitioner is examined in the light of an inquiry thus limited, the lack of pertinence is evident. John Watkins was not asked about the dissemination of propaganda by or in the unions to which he belonged in his many years in the labor movement. He was not asked about propaganda activities by the 30 persons who are named in the indictment. He was not asked about those individuals as the objects of propaganda nor was he questioned concerning the extent or character of propaganda to which they might have contributed.[68]

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[67] See statements of Thomas, 83 Cong. Rec. 7577; Ford, 83 Cong. Rec. 7583; Robsion, 83 Cong. Rec. 7583-84.

[68] No contention can be raised that if petitioner had cooperated with the Committee on the few questions he refused to answer, such questioning would have followed. Preliminary questions must be of themselves relevant. *Bowers v. United States*, 202 F. 2d 447, 452 (C.A.D.C., 1953).

What the Committee did not ask is thus significant in determining whether it was engaged in an authorized investigation of propaganda and related activities. What it did ask is equally significant. It asked petitioner about the Communist Party membership of certain individuals during the years 1942-1947. A number of those individuals were not even union members.[69] As to them, there was clearly no relevance to propaganda activities in unions. And the identification of those individuals who were members of unions in 1942-47 could add nothing to the Committee's knowledge of current Communist propaganda activities in unions. For one thing, the lapse of time would in itself render such evidence regarding individuals practically meaningless; defection from the Communist Party has been widespread.[70] For another, the type, extent and character of Communist activities in unions during the period of our country's war-time friendship with the Soviet Union were thoroughly different from Communist methods of operation in more recent years. So, to whatever extent the naming of individuals can ever be relevant, the activities of the individuals about whom petitioner was questioned would in this instance shed no light on anything the Committee might really have wanted to know with respect to propaganda activities.

We submit that the questions petitioner refused to answer fall outside the scope of the language of the Committee's authorization on the basis of any fair reading of the resolu-

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Moreover, petitioner had indicated by his original statement and by his answers to the general questions which the Committee asked that he would cooperate with the Committee to the extent of answering relevant questions of substance, not mere identification.

[69] Theo Kruse, a "beauty parlor operator" (R. 99); Murray Levine, "just citizens" (R. 101); Sarah Levine, "just citizens" (R. 101); Olaf Lidel, a "watchmaker" (R. 101); Harold Metcalf, "a retired machine worker" (R. 103); John and Marie Wilson, "only Communists" (R. 109).

[70] See pp. 112, *infra*.

tion; they certainly fall outside the authorization if the authorization is to be construed so as to avoid constitutional doubts or the imputation to Congress of a constitutionally questionable intent. *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366; *United States* v. *C. I. O.*, 335 U. S. 106; *United States* v. *Rumely*, 345 U. S. 41; *United States* v. *Harriss*, 347 U. S. 612. Were it not for the possibility that the House has ratified the broad construction of the Committee's authority which the latter has asserted and acted upon over the years, there could be no question as to any other interpretation of the resolution. But, as already indicated, ratification in these circumstances is a complex and difficult subject and is rendered particularly so by the continued public assertion by the Committee of its power to expose, an assertion which we have documented and demonstrated in Point II of this brief and which was unquestionably known to the members of the House. We turn now to the question of ratification.

C. Ratification

The House of Representatives has had occasion to deal with the question of the Committee's authority many times. It has been called upon to extend the life of the Special Committee on five occasions.[71] It has considered and approved a resolution establishing the Committee on Un-American Activities as a permanent committee of the House.[72] It has made at least nineteen annual appropriations to the Committee to carry on its investigations,[73] and since the Com-

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[71] H. Res. 26, 76th Cong., 1st Sess., 84 Cong. Rec. 1098 (1939); H. Res. 321, 76th Cong., 3d Sess., 86 Cong. Rec. 572 (1940); H. Res. 90, 77th Cong., 1st Sess., 87 Cong. Rec. 886 (1941); H. Res. 420, 77th Cong., 2d Sess., 88 Cong. Rec. 2282 (1942); H. Res. 65, 78th Cong., 1st Sess., 89 Cong. Rec. 795 (1943).

[72] 79th Cong., 1st Sess., 91 Cong. Rec. 10 (1945).

[73] 75th Cong., 3d Sess., 83 Cong. Rec. 8637 (1938); 76th Cong., 1st Sess., 84 Cong. Rec. 1288 (1939); 76th Cong., 3d Sess., 86 Cong. Rec. 688

nittee became a permanent committee, it has approved the Legislative Reorganization Act [74] which included language identical with the prior resolution describing the Committee's scope of authority. It has five times, at the opening of a new Congress, approved House Rules which included provision for the Committee on Un-American Activities as a standing committee having the authority set out above.[75]

The contention can be made with force that the House, through these extensions, reenactments and appropriations, has ratified the Committee's own broad construction of its authority—both a construction which would authorize the Committee to engage in exposure and a construction which would expand the authority of the Committee in some undefined fashion beyond the normal limits of propaganda. The Committee itself has formulated its authority in varying terms, most frequently stating it to extend to the exposure of all subversive and un-American activities and has made this assertion of authority known to the members of the House through its reports, hearings and public statements (Point II A). Yet the varying and

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1940); 77th Cong., 1st Sess., 87 Cong. Rec. 899 (1941); 77th Cong., 2d Sess.; 88 Cong. Rec. 3754-58 (1942); 78th Cong., 1st Sess., 89 Cong. Rec. 110 (1943); 78th Cong., 2d Sess., 90 Cong. Rec. 762 (1944); 79th Cong., 1st Sess., 91 Cong. Rec. 1856 (1945); 79th Cong., 2d Sess., 92 Cong. Rec. 209 (1946); 80th Cong., 1st Sess., 93 Cong. Rec. 699 (1947); 80th Cong., 2d Sess., 94 Cong. Rec. 2405 (1948); 81st Cong., 1st Sess., 95 Cong. Rec. 044 (1949); 81st Cong., 2d Sess., 96 Cong. Rec. 3941 (1950); 82nd Cong., 1st Sess., 97 Cong. Rec. 1155 (1951); 82nd Cong., 2d Sess., 98 Cong. Rec. 2646 (1952); 83d Cong., 1st Sess., 99 Cong. Rec. 1358 (1953); 83d Cong., 2d Sess., 100 Cong. Rec. 2282 (1954); 84th Cong., 1st Sess., 101 Cong. Rec. 1074 (1955); 84th Cong., 2d Sess., 102 Cong. Rec. 1487 (1956).

[74] 60 Stat. 812.

[75] H. Res. 5, 80th Cong., 1st Sess., 93 Cong. Rec. 38 (1947); H. Res. , 81st Cong., 1st Sess., 95 Cong. Rec. (1949); H. Res. 7, 82nd Cong., st Sess., 97 Cong. Rec. 9 (1951); H. Res. 5, 83d Cong., 1st Sess., 99 ong. Rec. 15 (1953); H. Res. 5, 84th Cong., 1st Sess., 101 Cong. Rec. (1955).

loosely defined terms in which this authority has been asserted renders it difficult to conclude precisely what, if anything, the House may have ratified.

A careful examination and review of the debates in the House on the occasions of extension, reenactment or appropriation leads to the conclusion that there was no consistent congressional intent with respect to the precise scope of the Committee's authority. Many of the debates were long and heated, particularly in the early days of the Special Committee. Members of the House expressed their individual views as to the proper function of the Committee, but these views diverged widely, both among proponents and opponents of the Committee. In these circumstances, an "aye" vote in favor of the Committee's continuation or of the appropriation of funds for the Committee can hardly be said to be a necessary indication of approval of one construction of the scope of the Committee's authority as distinct from another and certainly not of a construction of the Committee's authority that goes beyond the plain meaning of the words of the authorization. *Biddle* v. *Commissioner of Internal Revenue*, 302 U.S. 573, 582.

Many of those in favor of continuation of the Committee spoke with praise of its widely-ranging exposure activities and it is fair to say, on a reading of all the debates, that those who so spoke were the preponderant group. For example, during the debate in 1939 when, for the first time the question of the continuation of the Special Committee came before the House, Congressman Taylor, speaking in favor of the resolution, described the Committee as

> "a committee which it is now proposed to crucify because it showed courage and determination in its efforts to expose radicalism in our midst." (84 Cong. Rec. 1101, 76th Cong., 1st Sess.)

Similarly, Congressman Youngdahl urged the continuation of the Committee, which would

> ". . . ferret out and drag into the daylight those enemies already here and tearing at the very heart of our democracy . . ." (84 Cong. Rec. 1113, 76th Cong., 1st Sess.) [76]

If these statements stood alone, one might be forced to conclude that the House had ratified some vague and imprecise assertion of broad Committee authority. But some members of the House indicated that they disagreed with this view of the Committee's authority and voted for the Committee in the understanding that it would restrict its activities to proper ones. On some occasions, indeed, these members stated that they had received assurances to that effect and were voting for continuation or appropriation on that supposition. Congressman Celler stated this view at the time of the debate on the first continuation of the Special Committee when he said (84 Cong. Rec. 1115, 76th Cong., 1st Sess.):

> "I shall vote for the final resolution primarily because recently, in a conversation I had with the gentleman from Texas, he agreed specifically that he had made errors and that he would not repeat them. I asked him a series of questions in order to bring out his future plans for the conduct of the committee. His answers were satisfactory."

When it was proposed to extend the life of the Committee for a second time, Congressman Sabath indicated that he

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[76] Among the other statements describing or lauding the Committee's exposure activities, see Smith, 84 Cong. Rec., 1113, 76th Cong., 1st Sess.; Thomas, 86 Cong. Rec. 578; Fish, 86 Cong. Rec. 593, 76th Cong., 3d Sess.; Ford, 88 Cong. Rec. 2295, 77th Cong., 2d Sess.; Thomas, 89 Cong. Rec. 797; Dies, 89 Cong. Rec. 806, 78th Cong., 1st Sess.; Busbey, 94 Cong. Rec. 2409, 80th Cong., 1st Sess., and those set out in Point IIA.

had voted for the appropriations the last Session "on the assurance that the investigation would be properly conducted" (86 Cong. Rec. 573, 76th Cong., 3d Sess. (1940)). During this same debate, Congressman Celler again commented that he would vote for the Committee only on assurances that lists of so-called Reds would not be repeated (86 Cong. Rec. 584).

In the light of these statements, evaluation of the series of actions by the House which might be said to constitute ratification of a broad reading of the Committee's authority becomes extremely difficult. An affirmative vote for the Committee has ambiguous characteristics which are rendered even more ambiguous by statements of those who sometimes voted for the Committee and sometimes against.

Congresswoman O'Day expressed the ambivalent views of some members toward the past work of the Committee and the question of continuing it:

> "Mr. Speaker, I voted originally for the creation of this committee. I believe that all subversive and un-American activities should be stamped out, but I did not vote for a continuation of the committee because of the un-American way in which it conducted the committee meetings. Unless we are assured that the committee will be conducted in a different manner in the future, I, for one, will not be able to vote for it. [Applause]" (86 Cong. Rec. 580; 76th Cong., 3d Sess.).

And in a still later debate, Congressman Clark, pointing out that he had heretofore supported the Dies resolution, announced that he would vote against it for the reason that

> ". . . I think it has gone far afield from the language of the original resolution and has come to be more of a supervisor of personnel of executive departments . . ." (89 Cong. Rec. 796, 78th Cong., 1st Sess.).

Congressman Voorhis made a similar announcement. 89 Cong. Rec. 807. Again in considering the appropriation for the second session of the 77th Congress (1942), various Congressmen expressed their disapproval of Chairman Dies' attack upon employees of the Board of Economic Warfare and pointed out that this action was a direct violation of their understanding of the authority granted to the Committee a few days before when it had been voted the fourth extension of its life (88 Cong. Rec. 3754-3758).

Further doubt is cast on the meaning which can be ascribed to an affirmative vote for the Committee on these many occasions by the frank remarks of Congressmen themselves to the effect that members of the House did not want to be accused of refusing to vote for legislation to investigate un-American activities.[77] And, lastly, some members critical of the Committee's actions, stated explicitly that they did not believe that appropriations to a permanent committee should be denied, but that other methods should be evolved to restrict the Committee to its proper sphere.[78] See statements of Morris, 94 Cong. Rec. 2406; Combs, 94 Cong. Rec. 2412, 80th Cong., 2d. Sess.

These cross-currents of intent, indicated by the members' own statements discussed above, serve to cast doubt on the propriety of applying the ratification and reenactment doctrine in this instance. An attempt to distill from these debates over a period of more than 15 years the "true" congressional intent and understanding with respect to the

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[77] See, e.g., statements of Eberharter, 86 Cong. Rec. 582; Gale, 89 Cong. Rec. 803; Keller, 84 Cong. Rec. 1110. Carr, *op. cit. supra*, p. 20, has noted "the fear of House members, often indicated in preceding [1945] years, that any kind of vote against the un-American activities investigation was politically unwise."

[78] Of course, the approval by the House of the citations for contempt proposed by the Committee, including that of petitioner here, offers no additional basis for a ratification argument. *United States* v. *Rumely*, 345 U.S. at 47-48.

language of the Committee's authorization illustrates the Court's recent statement that reenactment by Congress of language whose meaning is in dispute is "an unreliable indicium at best." *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426; *Helvering* v. *Wilshire Oil Co.*, 308 U.S. 90; *Koshland* v. *Helvering*, 298 U. S. 441. While there is little doubt that the members of the House knew of the Committee's asserted powers and there is evidence that it intended to approve a broad construction of its resolution, the actions by the House may still be "wanting in that certainty and evident purpose which would justify [their] acceptance as a legislative declaration . . ." *Haggar Co.* v. *Helvering*, 308 U. S. 389, 400.

The scepticism with which the doctrine of construction by ratification may be viewed in many instances was given vivid illustration recently by this Court in *Peters* v. *Hobby*, 349 U. S. 331. Both petitioner and the Government there took the position that the President had acquiesced in the Loyalty Review Board's interpretation of its own authority.[79] This Court took the opposite view. It analyzed the language of the Executive Order which set forth the powers of the Loyalty Review Board and found that the power of post-audit in cases decided for the employee which the Board had asserted and exercised for many years was not authorized by that language. Mr. Chief Justice Warren, speaking for the Court, then said (at p. 345):

> "It is urged, however, that the President's failure to express his disapproval of Regulation 14 must be deemed to constitute acquiescence in it. From this, it is contended that the President thus impliedly expanded the Loyalty Review Board's powers under the Order. We cannot indulge in such fanciful speculation. *Noth-*

[79] Supplemental Memorandum of the United States, April 19, 1955; Supplemental Brief for Petitioner, April 21, 1955.

> *ing short of explicit Presidential action could justify a conclusion that the limitations on the Board's powers had been eliminated.* No such action by the President has been brought to our attention. There is, in fact, no evidence that the President even knew of the Board's practice prior to April 27, 1953, three weeks after the Board had notified petitioner of its intention to 'hold a hearing and reach its own decision.' "[89] (Emphasis supplied.)

The *Peters* case has three striking similarities to the case at bar on this question of extending doubtful authority by ratification or acquiescence. Thus, the *Peters* case involved an executive agency's interpretation of its grant of authority from the Chief Executive; the instant case involves a House Committee's grant of authority from the House. Secondly, in the *Peters* case the language of the Executive Order from which the Board's authority stemmed appeared incapable on its face of the construction which both parties argued had been given to it by ratification. 349 U.S. at 343. The authorization of the Committee here has the same fatal defect. The doctrines of ratification and acquiescence can render more certain that which is uncertain; they cannot change the normal meaning of words. As this Court has stated:

> "We should of course be faithful to the meaning of a statute. But after all Congress expresses its meaning by words. If legislative policy is couched in vague language, easily susceptible of one meaning as well as

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[89] This last factor adverted to by the Court as negativing Presidential acquiescence is not, in the light of the entire opinion, the determining point. Indeed, it is noteworthy that both parties believed that the evidence showed that the President did have knowledge of the executive interpretation. Supplemental Brief of Petitioner, p. 16; Supplemental Memorandum of the United States, pp. 3-4.

another in the common speech of men, we should not stifle a policy by a pedantic or grudging process of construction. To let general words draw nourishment from their purpose is one thing. To draw on some unexpressed spirit outside the bounds of the normal meaning of words is quite another. For we are here not dealing with the broad terms of the Constitution 'as a continuing instrument of government' but with part of a legislative code 'subject to continuous revision with the changing course of events'." *Addison* v. *Holly Hill Co.*, 322 U.S. 607, 617.

Lastly, in the *Peters* case, the application of the ratification principle would have brought the Court to the determination of crucial constitutional issues; that same difficult duty would devolve upon the Court here. "Indeed, adjudication here, if it were necessary, would affect not an evanescent policy of Congress but its power to inform itself, which underlies its policy-making function. Whenever constitutional limits upon the investigative power of Congress have to be drawn by this Court, it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits." *United States* v. *Rumely*, 345 U. S. at 46.

It would appear difficult to say on the evidence here that the House has, by any ratification, "unequivocally" authorized exposure activities of the Committee in areas far removed from propaganda and propaganda activities. Although the preponderant position in the debates was undoubtedly an approval of the Committee's asserted broad powers, we have seen that there was a clearly-expressed minority view even among proponents of the Committee. While there can be little question that the House knew of the Committee's interpretation of its resolution, mere knowledge cannot be deemed ap-

proval in the face of this vigorous dissent. Moreover, it is one thing to regard renewal of authority or appropriation of funds with knowledge of the interpretation put upon that authority by a committee as a ratification of that interpretation if such interpretation could reasonably under all the circumstances be derived from the words used in the grant of authority. But it would be dangerous to imply any ratification of authority which could not reasonably be read into the language used by the House. In the instant case the words of authority cannot without distortion be construed to authorize the exposure and branding of individuals as public enemies for the sake of exposure and retribution (p. 80, *supra*). When these considerations are weighed together with the Court's policy to avoid constitutional questions wherever possible, the argument for ratification does not appear to lead irresistibly to a conclusion that there was an effective broadening of the Committee's authority beyond the fair intendment of the language. This Court has even suggested that a strained construction of language may be proper to eliminate difficult constitutional questions and to avoid ascribing to the Congress an intent to authorize an inquiry of dubious limits or procedures susceptible of grave abuse. *United States* v. *Rumely*, 345 U.S. at 47. It can certainly be questioned whether there would be any substantial strain in a rejection of congressional ratification on the facts presented here.

In view of the doubts cast upon the application of the doctrine of ratification to the facts at bar, this Court may deem it appropriate to avoid the constitutional issues already presented by finding against ratification and holding the questions petitioner refused to answer outside the scope of the Committee's authorization.

IV

The Compelled Disclosures Sought by the Committee Abridge Rights Protected by the First Amendment

We believe that preceding sections of this brief (Points II A, B, C, D) fully support the proposition that the questioning of petitioner by the Committee was an exercise of its asserted purpose of exposure. If, however, this Court were to reject petitioner's argument that the Committee's purpose was exposure rather than investigation in aid of a valid legislative purpose, it does not follow that the Committee could constitutionally require petitioner to reveal the past political affiliations of his one-time associates.[81] The absence of a legislative *purpose* clearly invalidates Committee action (Points I, II, III); its presence cannot validate governmental infringement on constitutional liberties. There still remains the question whether there was a Congressional *need* for the information sought and, if so,

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[81] The affiliations in question were no less political because they were with the Communist Party. Counsel for petitioner recognize that many leaders of the Party have been convicted of conspiracy under the Smith Act and that the Congress has declared the Party an agency of a hostile foreign power (see Communist Control Act of 1954, § 2, 68 Stat. 775). But these aspects of the Party do not preclude legitimate political association for the avowed purposes of the Party. Certainly, during the years from 1942 to 1947, the Party was a legal political party whose candidates appeared on the ballot in local and national elections. As this Court said in *Communications Assn.* v. *Douds*, 339 U.S. 382, 392:

> "Communists, we may assume, carry on legitimate political activities . . . By exerting pressures on unions to deny office to Communists and others identified therein, § 9(h) . . . has the further necessary effect of discouraging the exercise of political rights protected by the First Amendment."

Furthermore, there is not presented here any refusal to testify concerning seditious or criminal activity or advocacy. Petitioner only refused to identify persons as former members of the Party; the Committee evinced no interest in anything beyond the names of former Party members. Under these circumstances, nothing is involved here other than presumably "legitimate political activities".

whether the need was sufficiently urgent and exigent to justify the infringement upon the First Amendment rights involved. We turn, therefore, to an examination of the question whether the Committee's compelled disclosures infringed upon First Amendment rights and if so, whether there was such a pervasive, overriding Congressional need for the information sought from petitioner as to remove the enforced disclosures from the protection of the First Amendment.

A. *First Amendment Protections Apply to Testimonial Disclosures Sought by Congressional Committees*

Even before this Court's decision in *United States* v. *Rumely*, 345 U.S. 41, it was manifest that congressionally-compelled testimonial disclosures are subject to First Amendment prohibitions. For congressional inquiry, like congressional legislative action, can have the effect of abridging the individual's freedom to espouse and express political views and to associate with others for political purposes—political rights which lie at the very foundation of the guarantees of the First Amendment.[82] This Court's historic decisions have given freedom of political belief, expression and association effective, paramount constitutional significance.[83] Nor does the Amendment merely preclude prohibition of the exercise of these rights; it likewise precludes "indirect discouragements"[84] flowing from

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[82] See, e.g., *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152, n. 4; *Stromberg* v. *California*, 283 U.S. 359, 369. And see concurring opinion of Mr. Justice Brandeis in *Whitney* v. *California*, 274 U.S. 357, 374-78.

[83] See, e.g., *Wieman* v. *Updegraff*, 344 U.S. 183; *Thomas* v. *Collins*, 323 U.S. 516; *De Jonge* v. *Oregon*, 299 U.S. 353; *United States* v. *C.I.O.*, 335 U.S. 106, 129 (concurring opinion). *Cf. Communications Assn.* v. *Douds*, 339 U.S. 382, 393.

[84] *See Communications Assn.* v. *Douds*, 339 U.S. 382, 402.

restrictive governmental action of various kinds,[85] including those derived from governmentally-compelled public disclosures.[86] Thus, the decisions before *Rumely* clearly foreshadowed this Court's view that congressionally-compelled testimonial disclosures could present weighty First Amendment issues.

Any doubt as to the applicability of the First Amendment to congressional inquiries was resolved by this Court's declaration in *United States* v. *Rumely*, 345 U. S. 41, that compelled disclosure before congressional investigating committees of political activities and associations of individual citizens is subject to the prohibitions of the First Amendment.[87] There a congressional committee sought to compel identification of persons who made "bulk purchases" of books from an organization known as the "Committee for Constitutional Government". In deference to its "duty to avoid a constitutional issue" (p. 45) and since such compelled identification raised "doubts of constitutionality in view of the prohibitions of the First Amendment" (p. 46), a majority of this Court construed the Com-

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[85] E.g.: *Taxation: Murdock* v. *Pennsylvania*, 319 U.S. 105; *Grosjean* v. *American Press Co.*, 297 U.S. 233. *Licensing: Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495; *Kunz* v. *New York*, 340 U.S. 290. *Denial of "privileges": Wieman* v. *Updegraff*, 344 U.S. 183; see Willcox, *Invasions of the First Amendment Through Conditioned Public Spending*, 41 Cornell L. Q. 12.

[86] *Thomas* v. *Collins*, 323 U.S. 516, 538-40. *Cf. United States* v. *Harriss*, 347 U.S. 612.

[87] This principle has been accepted by the court below since its decision in *Barsky* v. *United States*, 167 F. 2d 241 *cert. den.* 334 U.S. 843. See *Rumely* v. *United States*, 197 F. 2d 166, 174. The compelling reasons for the applicability of the First Amendment are examined in some detail by Mr. Justice Black and Mr. Justice Douglas, concurring, in *United States* v. *Rumely*, 345 U.S. 41, 48; Judge Clark, dissenting, in *United States* v. *Josephson*, 165 F. 2d 82, 93 (C.A. 2, 1947) *cert. den.* 333 U.S. 838, and Judge Edgerton, dissenting, in the *Barsky* case. See Comment, *Legislative Inquiry into Political Activity*, 65 Yale L. J. 1159.

mittee's authorization not to include power to compel such identification. The Court stressed, in words applicable here, that the First Amendment required "accommodation of these contending principles—the one underlying the power of Congress to investigate, the other at the basis of the limitation imposed by the First Amendment . . ." (p. 44).

Although the *Rumely* case thus makes clear that congressionally-compelled testimonial disclosures are subject to First Amendment prohibitions, this Court has not yet elaborated guiding criteria for the "accommodation of these contending principles"—the principles of the First Amendment and of the congressional power to require information as a basis of legislation.[88] Although not directly applicable in the present context, the "clear and present danger" test and a more recent formula approved by this Court (see *Dennis* v. *United States*, 341 U.S. 494, 510), may afford some guides and analogues outside the area for which they were devised. In measuring the constitutionality of congressional interrogation, they at least serve as a reminder of the preferred position of First Amendment rights.

Whatever formula may ultimately be devised for accommodating the power of congressional inquiry with First Amendment principles, there will always have to be a weigh-

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[88] The conflict in policies here is not, as it is sometimes denominated, merely a conflict between Congressional rights and "private rights." Congressionally-enforced disclosures may discourage that free political activity and association which safeguards the democratic system itself. Beyond the protection of "private rights", this Court has always been sensitive to the vital public interests secured by the free exercise of First Amendment freedoms. It has protected those interests even where the party asserting them could show little or no injury to his own constitutional rights. See, e.g., *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Thornhill* v. *Alabama*, 310 U.S. 88; *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495; *Winters* v. *New York*, 333 U.S. 507.

ing of the respective interests in the particular case.[89] Thus, while future close cases may require this Court to establish more particular criteria for the weighing of these interests, no such precise criteria are necessary here, for petitioner's First Amendment claims must be honored under any fair balance of the respective principles involved in the instant case. The interests involved must be judicially weighed and the substantiality of the need for the disclosure established. *It is just this balancing of conflicting principles that the court below refused to undertake.*

We turn now to a consideration of these conflicting interests and submit to the Court that on this record there was no showing of legislative need for the information petitioner refused to give the Committee, whereas, on the other hand, requiring petitioner to identify his former associates as past members of the Communist Party constituted a far-reaching infringement upon vital First Amendment rights.

B. *The Infringement on First Amendment Rights*

Petitioner and the persons whom he was required to identify as former Communist Party members enjoy the constitutional right to engage in political activities and undertake political affiliations, free from unwarranted enforced public revelation. Apart from any more general right of privacy which this Court has indicated may enjoy constitutional protection,[90] it is clear that the First

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[89] This, of course, is the import of the *Rumely* decision and the reference therein to Mr. Justice Holmes' statement in *Hudson County Water Co.* v. *McCarter*, 209 U.S. 349, 355. *Cf. Communications Assn.* v. *Douds*, 339 U.S. 382, 400.

[90] *Quinn* v. *United States*, 349 U.S. 155, 161; *Kilbourn* v. *Thompson*, 103 U.S. 168, 190; *McGrain* v. *Daugherty*, 273 U.S. 135, 173-174; *United States* v. *Sinclair*, 279 U.S. 263, 292-94, and cases cited; *Jones* v. *Securities Commission*, 298 U.S. 1, 25-28. See dissenting opinion of Mr. Justice Brandeis in *Olmstead* v. *United States*, 277 U.S. 438, 478: "The makers of our Constitution . . . conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

Amendment affirmatively guarantees some degree of privacy of individual political activity and affiliation. See *United States* v. *Rumely*, 345 U.S. 41; *United States* v. *Harriss*, 347 U.S. 612. The secrecy of the individual's ballot and the privacy of his political beliefs are not merely personal privileges—they are indispensable political necessities. In this vein, it has been well said:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizens to confess by word or act their faith therein.*" *Board of Education* v. *Barnette*, 319 U.S. 624, 642. (Emphasis supplied.)

Requiring petitioner to disclose the past political affiliations of his associates abridges his right of political privacy as well as theirs. Compelled public disclosure of past political associations invades the privacy under which such associations were undertaken. It is, in effect, a penalty on political association which serves as a restraint on political activity. The right of political association, if it is to be meaningful, must include the right not to be subjected to public humiliation for such association.

Most serious is the *prior* restraint implicit in such compelled public disclosure. The First Amendment infringement cannot be evaluated without considering the effect of the Committee's questions as a tangible and far-reaching prior restraint upon the freedom of political association and activity of petitioner, of the persons whom he was required to identify, and of the American public itself. Indeed, there has been a noticeable dampening of voluntary group association and discussion on political matters in this country since the Committee has asserted broad and virtually unlimited inquisitorial powers in this field.

The First Amendment allows of no distinction between compelled disclosure of one's own political activities and those of one's friends and associates. To some the fear of being identified may be paramount, while others would be equally restrained by the prospect of being compelled to inform in public on their political associates. Indeed, compelled identification of the political affiliations of others may more severely abridge First Amendment rights than compulsion to identify one's own political acts and associations. "Informing" on friends and associates is for some persons, such as petitioner, far more onerous than being called to explain one's personal political activities. In the circles in which petitioner moves, his commendable refusal to take refuge for his own activities in the protection of the Fifth Amendment and thus avoid the identification of others, would be but slight mitigation had he put himself in the position of informing on former associates in the labor movement. Likewise, a person undeterred by the threat of subsequent governmental interrogation, wherein he may admit or deny, explain or justify his conduct, may indeed hesitate at the prospect of subsequent identification by third parties unwilling or unable to reveal anything but the single fact of some political association. Because of the inapplicability in congressional hearings of the hearsay rule, the rule against opinion evidence and even the basic right to present a defense, "identification" by third parties may deter many from political activities they would undertake without hesitation if they merely faced the possibility of being called to explain their own conduct.

The presently pertinent restraint on free association is thus derived both from the Committee's exercise of the power to obtain the identification of former members of a political party and its power to make petitioner an "informer" on the political affiliations of his former associ-

ates.[91] The potential restraint is all persuasive. As Mr. Justice Douglas and Mr. Justice Black warned in the *Rumely* case, "if the lady from Toledo can be required to disclose what she read yesterday and what she will read tomorrow, fear will take the place of freedom . . ." So, too, if a union man from Rock Island can be subpoenaed in 1954 to disclose the 1944 political memberships of his then associates, fear will take the place of freedom of political expression and association. Indeed, the House Un-American Activities Committee's use of the subpoena power for identification purposes has already significantly impaired those freedoms. ". . . there exists today a very general reluctance to join organizations or, indeed, to have anything to do with either persons or organizations within a very broad zone of controversiality . . . The House committee must assume part of the responsibility for this changing attitude toward organizations."[92]

It is this censoring effect, the discouragement of free

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[91] In opposing the grant of certiorari, the Government argued that petitioner has waived the protections of the First Amendment. *Brief in Opposition*, p. 22. Initially, it may be questioned how far the doctrine of waiver, applicable in cases of "personal" constitutional rights (see, e.g., *Rogers* v. *United States*, 340 U.S. 367), applies to the public guarantees of the First Amendment. In any case, the Court will find no waiver in the record.

On the contrary, petitioner specifically asserted his right to refuse to answer questions about the former political affiliation of his associates and friends. Having explicitly refused to become an informer on the political affiliations of his associates, he waived neither his own First Amendment rights nor those of others which he could legitimately assert. See *Barrows* v. *Jackson*, 346 U.S. 249. Under these circumstances petitioner's offer to tell all about himself as long as he did not have to inform on others cannot be construed as a waiver. Such a doctrine would tend to prevent the cooperation of witnesses such as petitioner, who sought as far as possible to provide the Committee with information, short of the betrayal of past political associations. Petitioner did not surrender his right to object to all questions abridging First Amendment rights merely because he consented to answer some.

[92] Carr, *op. cit. supra*, p. 357.

political activity, inherent in the Committee's assertion and exercise of a power to compel identification of members of organizations the Committee finds suspect, which has resulted in impairment of political freedoms in the United States. The power which the Committee has always asserted, as it asserts it here, to require wholesale identification and re-identification of the membership of political groups, no matter how negligible or non-existent be the legislative informational need, is the Committee's chief means of prior restraint.[93] The resulting fear of inquisition, discouraging free political expression and affiliation, is today a tragic reality of American political life.

Moreover, the restraint on the exercise of First Amendment rights arising from the Committee's use of the power of "membership identification" is compounded by the circumstances, the manner and the consequences of identification before the Committee. It is these realities of the Committee's operations that today cause many to hesitate before undertaking political activities and associations.

Collective Guilt: What organizational affiliation will result in "identification" cannot be foreseen. No organization is immune from the Committee's censure.[94] Before

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[93] One commentator has suggested that "the House should force the Committee to cease altogether its efforts to demonstrate the 'guilt' of particular individuals. The depersonalization of the work of the Un-American Activities Committee is the single most important change that is necessary if the threat offered by the committee to the American way of life is to be overcome." Carr, *op. cit. supra*, p. 462.

[94] The American Civil Liberties Union, for instance, was subjected to gratuitous attack in a Committee report on an unrelated organization for having "gone so far in its preoccupation with civil liberties as to defend both Communists and Fascists, sometimes with an almost complete disregard for considerations of national security involved." Report on Civil Rights Congress, H. Rep. No. 1115, 80th Cong., 1st Sess. (1947), p. 9. Among recent identifications required by the Committee was its demand for a list of all persons employed by or receiving any money from the

the Committee's undiscriminating standards[95] even anti-communist organizations become "subversive".[96] The Committee judges organizations by entirely accidental or incidental connections.[97] Even an organization's espousal of "democracy" as distinguished from a "republican form of government" has evoked a Committee demand for identification of members.[98]

Guilt by Association: Guilt by *past* association and by *mere* association is the basis of the Committee's identification method. In addition to the impossibility of predicting what organization will fall within the Committee's unique standards of guilt, it is impossible for the individual today to anticipate the political facts or organizational connections which, with the benefit of hindsight, the Committee may find damning tomorrow. Indeed, petitioner and those

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Fund for the Republic. As long ago as 1947 the Committee had investigated:

> "the American Civil Liberties Union, the C.I.O., the National Catholic Welfare Conference, the Farmer-Labor party, the Federal Theatre Project, consumers' organizations, various publications from the magazine 'Time' to the 'Daily Worker'." *United States* v. *Josephson*, 165 F. 2d 82, 95 (C.A. 2, 1947), *cert. den.* 333 U.S. 838.

[95] See illustrations in Judge Edgerton's dissenting opinion, *Barsky* v. *United States*, 167 F. 2d 241, 257, *cert. den.* 334 U.S. 843.

[96] On July 10th, 1956, in the Committee's hearings on a Fund for the Republic study *(Report on Blacklisting)*, Mr. John Cogley, its principal author, after having been questioned at length on the organizational affiliations of his staff members, said (Tr. pp. 115-116):

> ". . . Mr. Harrington, you referred to as a Socialist. I don't think you can refer to it as a Communist front because the group that you refer to is vigorously anti-Communist.
>
> Mr. Arens: You of course are aware of the fact that Lenin, the key philosopher of communism, has said socialism is only one transition toward communism.
>
> Mr. Cogley: Yes, sir.
>
> Mr. Arens: And Socialists are only people who are conducting the transition from democracy to communism."

[97] See Carr, *op. cit. supra*, pp. 337-363.

[98] See the letter from the Chief Counsel of the Committee reproduced at 92 Cong. Rec. A508 (1946).

he was required to identify may well have been unable to foresee in the period from 1942 to 1947, the years about which the Committee was inquiring, the advent of the cold war or the subversive purposes of the Communist Party which became clearly manifest in later years.

An individual's espousal of a cause or membership in a group, no matter how meritorious, can be occasion for "identification" if the group includes, or the cause is also espoused by, Communists.[99] The individual's association with the offending organization may be two or three times removed but the Committee still finds the association tainted.[100] Under these circumstances the unpredictability of the acts and associations which may in future years cause one to be identified or to become an identifier before the Committee, cannot but effect a severe restraint upon political activities and associations.

Interrogation: The Committee may give "identified" persons an "opportunity" to testify. But the opportunity is often unwelcome. The hearing will be designed for maximum publicity, not judicious fact-finding. Identifications may be "leaked" piecemeal in distorted form to an eager press. The rights of witnesses before the Committee to make statements of their own,[101] to present their "defense evi-

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[99] See, e.g., Carr, *op. cit. supra*, p. 341. The same inference is drawn from public opposition to the Committee itself. *Ibid.*

[100] ". . . its method has been to take the names of persons active in a non-Communist organization, which may be called A, to show that they have also been identified with organization B which is alleged to be Communist-controlled, and to conclude that they have necessarily acquired a Communist taint from B, that they have necessarily transmitted this taint to A, and that the taint has ultimately touched all members of A, even those who have had no association with B. These latter members of A are then ready to be used in new box scores to show that organization C with which they are identified has acquired the taint." Carr, *op. cit. supra*, p. 344.

[101] See Carr, *op. cit. supra*, p. 306-312.

dence"[102] and to have effective assistance of counsel[103] are severely curtailed. As a former Chairman of this Committee told a witness: "The rights you have are the rights given you by this committee."[104] The process has all the appearance of a trial without the procedural safeguards provided by our system of criminal justice.[105] An appearance before the Committee is indeed not for the timid or faint of heart.

Consequences of Identification: Added to these discouraging realities of "identification" before the Committee are the consequences which regularly follow. Identifications are endlessly re-publicized by the Committee itself, in millions of distributed copies of reports which generally include merely the damning fact of identification (see pp. 52-54, *supra*). As we have already seen, identification before the Committee is often the end of a career or profession, if not of any employment whatever,[106] for the Committee encourages the social and economic ostracism of those identified (see pp. 55-57, *supra*).

Thus, the intimidating consequences of identification before the Committee are neither incidental nor hypothet-

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[102] See Carr, *The Un-American Activities Committee*, 18 University of Chicago L. R. 598.

[103] See Carr, *op. cit. supra*, pp. 295-306.

[104] In a verbal exchange with an attorney, who had been ordered in the middle of the questioning of his client to take the oath and to testify but who had refused to do so without benefit of counsel, Chairman Thomas said:

> "The rights you have are the rights given you by this committee. We will determine what rights you have and what rights you have not got before the committee. I insist you be sworn at the present time." Hearings regarding Communist Espionage in the United States Government (1948), p. 1310.

[105] Professor Wigmore has emphasized the need for limiting the legislative power of inquiry in view of the non-applicability of "evidential rules that in judicial trials protect parties and witnesses and check abuses of the power." VIII Wigmore, *Evidence* (3rd Ed.) § 2195, p. 80.

[106] See Cogley, *Report on Blacklisting* (1956).

ical. In the light of the Committee's self-confessed intention to expose, punish and even censor, the possibility of identification becomes a probability for those whose associations arouse the Committee's suspicion or the political hostility of some of its members. One who writes books, movies or television scripts, for instance, is not merely faced with the possibility of a legislative inquiry incidentally touching on his personal affairs; he can anticipate intentional identification by the Committee.[107] And even preparing and publishing a study on the effects of the Committee's activities in this area is enough to bring the author before the Committee for hostile interrogation.[108]

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[107] For instance, the 1951 Annual Report of the Committee states:

> "It was the hope of this committee, after having conducted the 1947 hearings, that the motion-picture industry would accept the initiative and take positive and determined steps to check communism within the industry . . . The committee pursued its established policy that whenever it is obvious that a responsible group, whether in industry, labor, or independent organization, does not perform its duty in guarding itself against Communist influence, then the committee must expose this defect. So it was with the motion-picture industry . . . If Communism in Hollywood is now mythical, it is only because this committee conducted three investigations to bring it about. The industry itself certainly did not accomplish this." H. Rep. No. 2431, 82nd Cong., 2d Sess., pp. 2, 8.

[108] On July 10, 1956, the Committee undertook a lengthy interrogation of Mr. John Cogley, as to his *Report on Blacklisting*. The Committee eschewed any implication that Mr. Cogley himself was not a loyal American but proceeded to question Mr. Cogley's study. The interrogation took the form principally of asking Mr. Cogley why he had not put this or that reference to this or that fact into his book. Mr. Cogley was asked questions about his assistants, such as whether he knew that Dr. Jahoda "had issued reports or studies herself critical of the loyalty programs of this Government" or knew "about her connection with the Socialist Democratic Party in Austria." (Tr. pp. 13-14).

At the conclusion of the hearing Mr. Cogley said (Tr. p. 112):

> "I would like to know, if I may, why I was called.
>
> The Chairman: Because we have been very much interested in this particular question and when your report was filed we were disappointed, at least I was, that you didn't discuss the failure of people who cooperated with congressional committees to obtain employment."

Thus, considered as a prior restraint on political freedoms, the Committee's use of the power of wholesale membership identification cannot be divorced from the realities of its self-asserted function of deliberate exposure. The restraint on political freedoms is immeasurably multiplied by the fact that it is purposeful.[109] This is the very basis of the distinction in the *Douds* case, 339 U. S. 382, 402-404, where this Court upheld the non-Communist oath provisions of the Taft-Hartley Act, stating:

> "But we have here no statute which is either frankly aimed at the suppression of dangerous ideas nor one which [may] . . . be made the instrument of arbitrary suppression of free expression of views . . . Congress did not restrict the activities of the Communist Party as a political organization; nor did it attempt to stifle beliefs."

In contrast, in the instant case the Committee's identification is "frankly aimed at the suppression of dangerous ideas"; has been "made the instrument of arbitrary suppression of free expression of views"; does restrict mere political activity and is in fact an "attempt to stifle beliefs". The present abridgment is a deliberate discouragement of the exercise of political rights.

But whether purposeful or incidental, it cannot be doubted that the Committee's exercise of its power of identification has seriously endangered and restrained fundamental political freedoms. These restraints on expression and asso-

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[109] The distinction between purposeful and merely incidental abridgment of First Amendment rights has been recognized by this Court since its decision in *Grosjean* v. *American Press Co.*, 297 U.S. 233, 250, where the Court viewed the tax in question as "a deliberate and calculated device in the guise of a tax to limit the circulation of information." See also, *Niemotko* v. *Maryland*, 340 U.S. 268; *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495, 505.

ciation were imposed upon petitioner, the persons on whom he was required to "inform", and the public at large, by the Committee's requirement that petitioner identify former associates as past members of the Communist Party. It is unnecessary to speculate on just what pervasive congressional need for information could justify these infringements on political liberties; certainly no such congressional need is presented here.

C. The Committee's "Need" for the Information Sought

Having shown how grave and far-reaching is the infringement of First Amendment freedoms in this case, we turn now to an examination of the Congressional "need" asserted as its justification. In so doing we note that this Court has required the need which justifies abridgment of First Amendment rights to be not merely some need but a substantial need;[110] has accorded First Amendment rights a preferred position;[111] and has determined that congressional authority, especially where it impinges upon constitutional liberties, must be exercised with "the least possible power adequate to the end proposed."[112]

Of course, these principles do not preclude legitimate congressional inquiry. Indeed we do not doubt that legislative

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[110] Among the purposes this Court has found too insubstantial are ones such as prevention of street littering (*Schneider* v. *State*, 308 U.S. 147), prevention of fraud and crime by door-to-door peddlers (*Cantwell* v. *Connecticut*, 310 U.S. 296), protecting a householder's quiet and privacy (*Martin* v. *Struthers*, 319 U.S. 141), governmental loyalty (*Board of Education* v. *Barnette*, 319 U.S. 624) and private property rights (*Marsh* v. *Alabama*, 326 U.S. 501).

[111] See *Saia* v. *New York*, 334 U.S. 558, 561, and cases cited.

[112] *Marshall* v. *Gordon*, 243 U.S. 521, 541, quoting from *Anderson* v. *Dunn*, 6 Wheat. 204, 231. This Court has repeatedly struck down legislation abridging First Amendment rights where the governmental objective asserted could be accomplished by a narrower restriction. See, e.g., *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495, 504-506; *Cantwell* v. *Connecticut*, 310 U.S. 296; *Schneider* v. *State*, 308 U.S. 147; Comment, *Legislative Inquiry into Political Activity*, 65 Yale L. J. 1159, 1173 n. 78.

requirements for information may support congressional inquiry into membership in the Communist Party under certain circumstances; the world-wide and domestic Communist menace is certainly an appropriate subject of congressional concern. But a legislative need for membership information in a particular situation at a particular time may be conceded without affirming the necessity of membership identification in all situations and at all times.

What the Committee demanded from petitioner in 1954 was identification of former associates as members of the Communist Party between 1942 and 1947. At the time of the hearings in question, the program and activities, and the character and membership of the Communist Party during these years had been exhaustively examined by the Committee itself.[113] In 1954 these matters were no longer subject to any appreciable amplification by the mere further accumulation of the names of Party members before 1947. The Committee's files at the time of these hearings already included the names of thousands of Party members[114] and millions of individuals on whom the Committee had information.[115]

The questions asked petitioner related to membership in the Communist Party many years before the hearing. In the interim, in 1947, Congress had enacted special legislation to deal with Communists in the labor movement. The need for information in 1954, if any there was, would have been in connection with the efficacy of that legislation between 1947 and 1954, rather than the names of Communist Party members between 1942 and 1947. Membership in the

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[113] See Ogden, *The Dies Committee* (1945); Carr, *The House Committee on Un-American Activities, 1945-1950* (1952).

[114] See pp. 50-51, *supra*.

[115] As early as 1943 the Committee reported having a file of "over 1,000,000 cards, each containing information on individuals and organizations engaged in subversive activities." H. Rep. No. 2748, 77th Cong., 2d Sess., p. 2.

Communist Party in these years would in itself have little enlightening significance; the Communist Party before the beginning of the "cold-war" in 1947 had a vastly different appearance than thereafter.

In his dissenting opinion, Judge Edgerton described some of these significant differences, such as this country's relationship with the Soviet Union and its attitude towards communism during the years in question (R. 191-192). Numerous persons, many doubtless idealistic and high-minded in their purpose, joined the Communist Party during this period, became disillusioned and left. It has been estimated that, although the average yearly Communist Party membership was about 40,000, over 700,000 persons have, at one time or another, been members thereof. Ernst and Loth, *Report on the American Communist* (1952) pp. 14, 33. One former member has referred to "those thousands who continually drift into the Communist Party and out again" and pointed to the fact that "the turnover is vast." Chambers, *Witness* (1952) p. 12. John Lautner, formerly a member of the Communist Party, testified in the trial of *United States* v. *Fujimoto*, 102 F. Supp. 890 (D. C. Hawaii, 1952) concerning the disillusionment of members with the Communist Party, as follows:

> "The Party was like a barn door, they were coming in and going out. As soon as new members found what the Party was they left. Year in and year out there was almost a hundred—well, a large percentage of turnover in the Party."

We are a nation of "joiners." Membership is not necessarily indicative of concurrence with the collective purpose, whether that purpose be overt or covert. A chance invitation from a friend or acquaintance at some party or meet-

ing will often result in a donation which turns out years later to have been a membership fee. As this Court recently emphasized in *Wieman v. Updegraff*, 344 U.S. 183, 190-191:

> "... membership may be innocent. A state servant may have joined a proscribed organization unaware of its activities and purposes. In recent years, many completely loyal persons have severed organizational ties after learning for the first time of the character of groups to which they had belonged '. . . one of the great weaknesses of all Americans, whether adult or youth, is to join something.' At the time of affiliation, a group itself may be innocent, only later coming under the influence of those who would turn it toward illegitimate ends."
>
> "... yet under the Oklahoma Act, the fact of association alone determines disloyalty and disqualification; it matters not whether association existed innocently or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources."

The Committee required nothing from petitioner other than the names of former Party members. It is difficult to see how such names acquired any informational significance except on the presumption that every former member of the Party necessarily shared in the purposes and activities which have become clear only in later years. In effect, the ordinary legislative inquiry has been reversed—instead of accumulating information on individual activities which reveal collective purposes or methods, a conclusion of collective guilt is employed to justify revealing the mere names of any former members. A valid Congressional

clear that it had no interest in determining the total number of Communists in his union or the identity of any except the specified ones they sought to expose.

Finally, it must be noted that this new theory of determining extent *name by name*, proposed by the Government, would permit a Committee, every time it sought to determine whether there was a problem in a particular area of American life, to identify publicly every person possibly in the category under scrutiny. Even though the dimensions of the problem were well known, as was the case here, the Government contends for the right of a congressional committee to determine the mathematically-exact extent of the problem by identifying each and every person in the suspect category no matter how far back. In the absence of any possibility or asserted possibility of legislative need for such a retroactive census, one can only find in the Government's theory a transparent rationalization of congressional investigation conducted for the sole purpose of exposure.

Just as the Government's new theory of the Committee's purpose in interrogating petitioner amounts to little more than a rationalization of exposure, so its legal conclusions amount to little more than a request for judicial abdication in the area of congressional investigations. In determining committee purpose, the Government asks the Court to close its eyes to any but the vague declarations of the authorizing resolution and the record of the Committee hearing at which petitioner testified and to give a hospitable interpretation (namely, its own tardy interpretation) to that resolution and record consistent with the respect and deference owed a coordinate branch of the Government. In considering the protections of the First Amendment, the Government, apparently rearguing *United States* v. *Rumely*, 345 U.S. 41, contends that the First Amendment is inapplicable to Congressional investigations

(Gov't. Br. 67-68) and, at the very minimum, that there is no First Amendment protection where the questions relate to any aspect of the Communist Party or Communist activities (Gov't. Br. 63-64). Finally, the Government denies that the standards of definiteness applicable to criminal statutes are applicable to contempts of congressional investigatory authority (Gov't. Br. 71). No matter how clear the Committee purpose of exposure, no matter how deep the Committee inroads on the First Amendment, and no matter how vague the authorizing resolution, this Court is asked to place the rubber-stamp of "contempt" upon any defendant who rejects the cloak of the Fifth Amendment.[4] Whatever may be the situation where Congress seeks to enforce its own contempt citations at the bar of either House, this Court cannot, consistent with the presumption of innocence (*Sinclair* v. *United States*, 279 U.S. 263, 296) and its decisions, from *Kilbourn* to *Quinn*, sustain a judicially-imposed conviction of the defendant without subjecting the congressional action to judicial scrutiny. Courts will not lend their aid to the arbitrary exercise of power.

One other general theme appears to run through the Government's brief—i.e., that there is some sort of analogy between the obligations of a witness at a judicial trial and those of a witness at a congressional hearing (Br. 19, 33, 41, 66, 73, n. 37). But this analogy breaks down right at the

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[4] Assistant United States Attorney Hitz, who tries the contempt cases for the Government in District Court, is more direct in his presentation of the Government's theory of "Fifth Amendment or nothing." Arguing in the District Court for petitioner's conviction, Mr. Hitz stated:

> "There is no protection for one who is in a position to give information to the Government and who has any reason other than the Fifth Amendment not to give it that will stand up against a charge under this indictment." (Transcript, p. 244).

Apparently, too, the Court of Appeals has now reached the ultimate extension of the *Barsky* case and accepted this same theory. *Barenblatt* v. *United States*, decided January 3, 1957, petition for certiorari pending, No. 742, October Term, 1956.

outset because the very breadth of the scope of congressional investigation for which the Government contends permits no meaningful comparison between judicial and congressional investigation.[5] Whereas testimony at a judicial proceeding centers around particularized and timely issues of fact, questioning at congressional hearings subjects the witness to uncircumscribed, and, in the view of the Government, unlimited areas of inquiry as to both subject and time.[6] Furthermore, testimony at a judicial trial is taken before an impartial judge and jury, whereas in congressional hearings the functions of judge and jury, and investigator and prosecutor, too, all reside in the committee members.[7] Finally, questions in a judicial trial are far less likely to impinge on matters of personal belief and conscience than are questions put by congressional investiga-

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[5] The Government not only argues that congressional committees must be able to inform themselves very broadly (Br. 29-30), but goes farther and contends (see Point V, *infra*) that the authority of the committees must be stated in such broad terms that the rules of definiteness applicable to criminal statutes cannot be applied in this area. Indeed, says the Government, the authorizing resolutions of congressional committees "are broader than the broadest acceptable standards which Congress may lay down in delegating authority to executive departments and agencies" (Br. 71). They are, we submit, many times broader than the issues in a courtroom.

[6] A persuasive illustration of the peril at which a congressional witness determines the nature of the inquiry and his rights therein appears in the instant case, where the Government's principal argument as to the nature and purpose of petitioner's interrogation was furnished him not at his hearing or in the lower courts but rather for the first time in an answering brief in the United States Supreme Court.

[7] There appears to be some disagreement between various committees of the American Bar Association on the dangers inherent in combining these functions. The Special Committee on Communist Tactics, Strategy and Objectives, in its brief amicus in this Court, apparently could find no danger in combining these functions in a legislative committee. A separate committee, proposing a statute to strip such federal agencies as the Federal Trade Commission of quasi-judicial authority, takes the view that "the adjudicating authority vested in many of the Federal agencies makes them policemen, jury and judge. . . . It just doesn't work." See New York Times, February 16, 1957, p. 33, col. 1.

tors delving into un-Americanism and subversion. Our judicial system is too jealous of the rights of witnesses called before the courts to permit of any fair analogy to witnesses called before congressional committees and subjected to questioning without the historic safeguards of the courtroom.

We turn now to the arguments in the Government's brief in so far as they are directed at petitioner's contentions. In so doing, we will follow the order in our initial brief.

I

The Congressional Power to Investigate Is a Limited Power and Does Not Encompass Exposure for Exposure's Sake

The Government's brief (Br. 53-57) does not take direct issue with petitioner's contention that it is beyond the constitutional power of a congressional committee to compel testimony for the sole or primary purpose of exposing individuals to public scorn and retribution. It does, however, make two tangential forays into the area which warrant a brief rejoinder.

The Government suggests that "there is considerable support amongst students of congressional power for the view that the 'informing function' of Congress is one of the inherent powers of the legislatures of representative governments" (Br. 55). But this appeal to Woodrow Wilson's phrase "informing function" is unavailing; he was writing about discussion and interrogation within the main body of Congress (see his reference to the question periods in the House of Commons) and not the use of compulsory process to compel the testimony of unwilling witnesses before congressional committees.[8] And the "informing function"

[8] See *United States* v. *Rumely*, 345 U. S. 41, 44; Barth, *Government by Investigation* (1955), p. 23.

referred to in the articles cited by the Government is an informing function in connection with the conduct of public business and the supervision of public administration." Whatever may be the allowable limits of the "informing function" in this area of supervising governmental action, none of the authorities cited by the Government remotely suggested its application to "the private affairs of the citizen" and we do not read the Government's brief as contending that they did.

The Government also appears to suggest (Br. 56-57) that, because Congress may require the publicizing of information through regulatory legislation, it may act through a committee to compel testimony to publicize information in the absence of legislation. But there is no distinction more fundamental to our tripartite system of democratic government than the distinction between a subcommittee (often a single member) of one House of Congress demanding and publicizing information and this being done pursuant to valid legislation passed by both Houses of Congress and subjected to Presidential veto and judicial review. In the first case, the congressional committee or subcommittee is seeking, not to obtain information for legislation, but to bring about the substantive results that would flow from the legislation if enacted. It is, in a word, seeking to shortcut the entire legislative process and bring about the effect of the legislation through its own action. The publicizing of information through duly-enacted legislation, general in application, prospective in effect, and definite in operation, is one thing; the publicizing of information through congressionally-compelled testimony of individual citizens, dis-

[9] Whether this is actually an "informing" rather than a "legislative" function might well be questioned. Petitioner's counsel actually included "the review of the actions of executive departments in the expenditure of public funds" as part of what it described as a legislative purpose (Pet. Br. 25).

criminatory in application, retroactive in effect and without procedural safeguards in operation, is something wholly different.

Indeed, one might venture the suggestion that it was the blurring of this very distinction that lay at the root of the post-war assaults upon the Bill of Rights. For a single Senator could utilize the subpoena powers of his congressional subcommittee for legislative trials, publicizing vague and long-forgotten derogatory information about distinguished citizens, whereas he could never have brought about the enactment of legislation to accomplish this same end. And the Committee on Un-American Activities could utilize its subpoena powers in the wholesale *ex post facto* exposure of private citizens described in petitioner's brief (pp. 41-58) whereas the Committee could never have brought about legislation to accomplish this same end. Indeed, the legislation actually enacted in this area (Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781 et seq; Foreign Agents Registration Act, 52 Stat. 631, 22 U.S.C. 611; Labor-Management Relations Act, § 9(h), 61 Stat. 143, 29 U.S.C. 159(h)), is general in application, prospective in effect and specific in operation.

We respectfully submit that the experience of the past decade has amply illustrated the significant distinction between publicizing of information pursuant to duly-enacted legislation and congressionally-compelled disclosures in the absence of legislation; it has pointed up the dangers to a free society when congressional committees go beyond investigation for the purpose of legislation and engage in exposure for exposure's sake.

II

The Questions Petitioner Refused to Answer Were Asked Solely for the Purpose of Exposing Him and Former Associates to Public Scorn and Ridicule

In both lower courts[10] and in petitioner's initial brief in this Court, petitioner marshalled his proof of exposure in chronological order (Br. 39-76). The Committee's express claims of an independent power of exposure were placed first as the *background* against which the particular evidence of exposure in petitioner's case should be considered, because, as stated by the dissenting judges below, "intentions tend to result in acts" (R. 195). Although we can conceive of no possible reason for this Court to deny itself this wealth of background material (Pet. Br. 41-58), the Committee's actions *vis-à-vis* petitioner in and of themselves leave no doubt that this was a clear case of exposure for exposure's sake.

In its brief the Government attempts to meet the force of petitioner's arguments on exposure by asking the Court to ignore all evidence of Committee purpose except the authorizing resolution and the Committee hearing at which petitioner testified, and, hospitably interpreting the resolution and the Committee hearing, to find a valid legislative purpose therein. We respectfully submit that logic and precedent militate against the Court accepting any such

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[10] The Government's implication that the trial court and the Court of Appeals found that the Committee was acting pursuant to a valid legislative purpose (Gov't. Br. 27-28) is contrary to fact. The trial court refused to consider the issue of exposure (R. 49, 58-60), apparently accepting the Assistant United States Attorney's views (see n. 4, *supra*) that there is no defense to Committee action in the general area of Communism except the plea of self-incrimination. The Court of Appeals' formal conclusion of a valid legislative purpose (R. 178-179), upon which the Government relies (Br. 28, n. 9), was clearly based on its earlier statement that it is enough that "the questions asked Watkins *could* be asked for a valid legislative purpose" (R. 178; Pet. Br. 70-76).

artificial limitation upon the scope of judicial review as that for which the Government contends, but even the limited materials which the Government concedes are proper subjects of scrutiny by this Court leave no doubt that this was a simple case of exposure. We will take up each of these points briefly, dealing first with the limited materials which the Government would have this Court examine.

1. Although the Government suggests that both the Committee's authorizing resolution and the record of the Committee hearing should be examined to determine Committee purpose (Br. 28), it places no noticeable reliance upon the former. Nor could it have done so. The vague and general terms in which the authorizing resolution is couched lend no aid in the search for Committee purpose. It is one thing to find evidence of Committee purpose in the authorizing resolution of a Committee created to investigate a particular incident (*Cf. McGrain* v. *Daugherty*, 273 U.S. 135; *Sinclair* v *United States*, 279 U.S. 263, and other cases cited by the Government at p. 28); it is a far different thing to find Committee purpose in a resolution to investigate broad areas of American life over a period of nearly 20 years. And, certainly, if the language of the resolution is to be considered in arriving at Committee purpose, its interpretation by the Committee over the years is equally to be considered, and here the Government runs squarely into the Committee's express claims of an independent power and duty of exposure (Pet. Br. 41-58).

The Government, in arguing that the Committee hearing evidenced a valid legislative purpose, relies upon a *pro forma* multi-purpose opening speech by the Committee Chairman many weeks (R. 43-44) and many unrelated and diverse witnesses (Pet. Br. 72) before petitioner testified. But this opening statement lends no comfort to the Government. For the Chairman's gentle puffing about bills recom-

mended by the Committee and enacted over the years and his catalogue of bills pending before the Committee cannot be taken as the Committee's purpose at petitioner's hearing where the questioning was totally unrelated to any of the bills enacted or pending or any other possible legislation (Pet. Br. 58-64, 70-76).[11] *Certainly past or pending legislation is not a license for a Committee to engage in exposure unrelated to that legislation.*

The Government itself appears to recognize that the questioning of petitioner had nothing whatever to do with the legislation to which the Chairman adverted. Indeed, the Government conceded, as we noted earlier, that the Committee was not concerned with "the general nature of Communist infiltrative techniques *vis-à-vis* labor unions" (Gov't. Br. 18) or "the nature of 'Communist techniques in labor unions' " (Gov't. Br. 39), and turns in this Court to its new theory that the Committee's purpose was to learn "the *extent* of the Party's penetration into these unions" (Gov't. Br. 18, 39) by determining "the numbers and identities of individuals who belong to the Party" (Gov't. Br. 34).[12] But,

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[11] The Government also relies upon the Chairman's general statement that the Committee was out to "ascertain the extent and success of subversive activities" (R. 43) and his somewhat similar statement to petitioner (R. 86). But these self-serving declarations that the Committee was following its authorizing resolution carry even less weight than the puffing about past legislation and the cataloguing of pending legislation.

[12] The Government makes two other half-hearted justifications for the Committee questioning of petitioner:

(i) The Government suggests that petitioner was questioned with a view to obtaining corroboration of the testimony of Rumsey and Spencer. But it adds nothing to the fact that petitioner was being questioned concerning whether certain persons were Communists between 1942 and 1947 to say that he was being questioned to corroborate the testimony of earlier witnesses who had testified that these persons had in fact been Communists during that period. That Rumsey and Spencer were willing tools of the Committee's purpose of exposure does not make corroborative testimony any less a part of the Committee's purpose of exposure.

(ii) The Government also suggests that "petitioner had shown himself to be a recalcitrant witness" (Gov't. Br. 40, n. 19). The degree of confidence with which the Government makes this suggestion can best be

as we have already demonstrated (pp. 2-6, *supra*), even the most credulous could hardly accept the argument that the Committee had suddenly set out to find the mathematically-exact extent of the problem with which it had been dealing for 16 years by naming and numbering every Communist in the labor movement ten years earlier or that it sought such information in connection with any past, present or future legislation. Thus, even limiting the Court's scrutiny to those very materials deemed appropriate by the Government, the absence of a legislative purpose is clear.

2. But there is no occasion for this Court to deny itself other probative materials relevant to a determination of the Committee's purpose. As the Court has clearly stated, "if they [Congress] are proceeding in a matter beyond their legitimate cognizance, *we are of opinion that this can be shown . . .*" *Kilbourn* v. *Thompson*, 103 U.S. 168, 197. And, pursuant to this Court's holding that the absence of a legislative purpose "can be shown", the Court has examined debates on the floor of Congress (*McGrain* v. *Daugherty*, 273 U.S. 135, 179, n. 20; *United States* v. *Rumely*, 345 U.S. 41, 45-47) and internal committee action (*Sinclair* v. *United States*, 279 U.S. 263, 295) to determine the purpose and scope of legislative inquiry.[13] Far from limiting the scope of its review, this Court has weighed whatever evidence of

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seen by its statement, later in its brief, that "a more complete and candid statement of his [petitioner's] past political associations and activities . . . can hardly be imagined" (Gov't. Br. 39).

[13] The Government relies on *McGrain*, *Sinclair*, *Chapman* (166 U. S. 661) and *Barry* (279 U.S. 597) to support its contention that this Court should limit its review to the authorizing resolution and the Committee hearing at which petitioner testified. But, as we have shown in the text, this Court examined other evidence in *McGrain* and *Sinclair* and simply found that the materials offered were "not enough to show" (*Sinclair* v. *United States*, 279 U. S. 263, 295) the absence of a legislative purpose. In *Chapman* there was no contention that the congressional committee was pursuing an improper purpose in its questioning and in *Barry*, the witness not yet having been interrogated, this Court would not assume, in advance of the interrogation, that the asserted objective in the authorizing resolution would not be followed.

purpose has been put before it by either party. The rule, we submit, is simply one of reason and of relevance.

On any basis of reason and relevance, this Court can weigh the Committee's express claims of the power of exposure (Pet. Br. 41-58) in determining its purpose in interrogating petitioner. What the Government refers to as "extraneous evidence" (Br. 42) is actually the type of evidence considered regularly by this Court in determining congressional intent—excerpts from official reports and hearings of the Committee (R. 62-63, 111-163), excerpts from statements on the floor of Congress by the Chairman and members of the Committee in connection with Committee business (R. 63, 164-168), and statements to the press by the Chairman and members of the Committee on Committee business (R. 64, 168-174). There is certainly no reason to ignore the Committee's own view of its responsibilities reflected in these materials. "By claiming that it had the authority and duty to expose, the Committee implied it intended to expose . . . it may be inferred from a person's statement that he intended to do something, that he later actually did it" (R. 195-196).

Nor is the Government's *in terrorem* argument against the use of relevant evidence of Committee purpose convincing. The Government conjures up hypothetical cases of conflicting testimony by Committee members to demonstrate the "practical problems" (Br. 49) that will arise if the courts may examine into more than the self-serving declarations in the authorizing resolution and the Committee hearing. We cannot believe these "practical problems" are insurmountable. Legislators will not often be called to testify as hostile witnesses to the invalidity of their own actions. Furthermore, if committee purpose is so vague that committee members cannot agree, the time will certainly have come for the courts to intervene. But, what-

ever may be the situation in such a hypothetical case, petitioner presents to this Court proof of exposure through relevant materials uniformly accepted as proof of purpose and intent.

III

The Questions Petitioner Refused to Answer Were Outside the Scope of the Committee's Authorization

As indicated in our initial brief (p. 77), counsel for petitioner would have preferred to rely entirely on the clearcut and overwhelming constitutional arguments against exposure. Now, having reviewed the tortuous course of the Government's efforts to avoid the force of petitioner's arguments, we are more than ever ready to rest our case on the simple proposition that petitioner's questioning was an indisputable case of exposure for exposure's sake. But we remain mindful of our obligation to seek a narrower ground of decision and, having argued below and in our initial brief here that the Committee's questioning of petitioner was beyond the scope of its authorizing resolution, we call the Court's attention to the fact that the Government has wholly failed to meet our contentions in this regard.

Petitioner's initial brief argues extensively (pp. 76-95) that the questions upon which petitioner's conviction is based were outside the scope of the Committee's authorizing resolution for two reasons: first, because the authority of the Committee cannot be deemed to include a mandate to engage in exposure, and, second, because, whether or not the Committee's purpose was one of exposure, the questions upon which petitioner's conviction is based are unauthorized by the language of the resolution, which is confined to propaganda and propaganda activities.

The Government answers the first of petitioner's contentions with the statement that the Committee had a valid

legislative purpose and was not engaging in exposure (Gov't. Br. 31, n. 13). The Government apparently concedes that, if the Committee was engaging in its asserted power of exposure, it was exceeding its own authorizing resolution.[14] We submit that, in interrogating petitioner, the Committee was so engaged and was so exceeding its own authorizing resolution.

The Government does not answer the second of petitioner's contentions—that, whether or not the Committee's purpose was one of exposure, the questions upon which petitioner's conviction is based are unauthorized by the language of the resolution, which is confined to propaganda and propaganda activities (Pet. Br. 17-18, 82-86). Instead, the Government's brief states that "petitioner does *not* urge that, if the Committee did have a proper legislative purpose (as we believe), its actions were unauthorized by its charter from the House" (Gov't. Br. 31, n. 13). *Lest there be any misunderstanding on this point*, we repeat that we urged below, we urged in our initial brief in this Court, and we urge here that the Committee's authorization is limited to the investigation of propaganda and propaganda activities (Pet. Br. 78, n. 61, 82-84) and that the questions upon which petitioner's conviction is based are clearly and indisputably unrelated to propaganda and propaganda activities (Pet. Br. 84-85). If the Court concludes that the authorizing resolution has not been broadened beyond propaganda and propaganda activities by ratification (Pet. Br. 86-95), petitioner's contention here appears to be the

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[14] The authorizing resolution is limited by its own terms to matters which would aid Congress in the consideration of remedial legislation and thus excludes questions asked solely for exposure purposes (Pet. Br. 79-82) and the Government appears to concede, by failing so much as to mention the point, that this has not been altered in any way by ratification through extension, reenactment or appropriation (Pet. Br. 86-95).

narrowest ground upon which a reversal of his conviction can properly be predicated.[15]

IV

The Compelled Disclosures Sought by the Committee Abridge Rights Protected by the First Amendment

The Government makes three arguments in support of its contention that the Committee did not violate petitioner's rights under the First Amendment by requiring him to identify former associates as past members of the Communist Party:

1. Petitioner was attempting to vindicate not his, but their, rights (Br. 58-60).

2. There are no First Amendment protections against congressional inquiry (Br. 66-68).

3. Since Communism is a fit subject of inquiry and legislation, Congress has the power to identify publicly

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[15] It should be noted that the Government's new theory of purpose that the Committee was seeking to determine the mathematically-exact extent of Communist penetration of labor unions by naming and numbering further demonstrates that the questions asked petitioner were beyond the Committee's authorization. For certainly a retroactive census of Communists during the years 1942-1947 can have no relation to propaganda and propaganda activities. Indeed, this newly-asserted Committee purpose is so novel a function for a congressional investigating committee and trenches so immediately upon valued constitutional rights (Point IV, *infra*) as to require a far clearer congressional authorization than any which the Government can show in the instant case.

The dangers of a broad construction of congressional investigative authority are clearly evident here. Recently it has been politically popular to hunt and expose Communists. Today it is the vogue in the south to hunt and expose NAACP members. Tomorrow it may be politically popular to hunt and expose sex deviates and even women suspected of living well without visible means of support. The public interest is not served by a latitudinarian extension of a legislative committee's authorization to investigate specified matters to the point where the committee reaches "into the private affairs of the citizen."

all past and present members of the Communist Party (Br. 23, 63-64).

None of these arguments withstands analysis.[16]

1. What petitioner was seeking to vindicate in his refusals to answer was his purely personal right not to become an informer on past political associates.[17] In a world in which informers are deemed the most hateful of men, "invented to be the public ruin" (Tacitus, *Annals*, Book 4, p. 30), compelled "informing" on past political associates is both a public humiliation for such past association and a prior restraint on petitioner's future association and activity.[18] Since petitioner was clearly attempting to vindicate his own rights, it becomes unnecessary to question the Government's assertion that petitioner could not invoke the rights of his former associates, although this Court's decision in *Barrows* v. *Jackson*, 346 U.S. 249, unmentioned by

[16] The Government refers to, but does not rely upon, the additional fact that petitioner did not use the words "the First Amendment" at the Committee hearing (Br. 13, 59, n. 30). Nor could the Government have so relied, for petitioner made clear his intent to claim whatever rights he had when he stated to the Committee that the questions he refused to answer "are outside the proper scope of your Committee's activities" (R. 85), that the Committee had no "right to undertake the public exposure of persons because of their past activities" (R. 86) and that he refused "to discuss the political activities of my past associates" (R. 86). Furthermore, petitioner has found no authority, and the Government cites none, for the proposition that a witness before a congressional committee must plead the First Amendment precisely as he would the privilege against self-incrimination. Certainly *Ullmann* v. *United States*, 350 U.S. 422, which the Government mentions in this connection, involved a failure to plead the First Amendment in the trial court, not before the Committee.

[17] That these associations were no less political because they were with the Communist Party is developed at page 96, note 81, of petitioner's initial brief.

[18] The fact that petitioner yielded to Committee and public pressure to the extent of naming four persons whom he had reason to believe might still be Communists in no way weakens his position in refusing to become an informer against those who "have long since removed themselves from the Communist movement" (R. 85) and who would have suffered bad trouble from his act of informing.

the Government, would appear to indicate that petitioner could legitimately have asserted the rights of these former associates.

2. Arguing that there is no "right to silence" or "right of privacy" protected by the First Amendment, the Government continues to assert that the First Amendment "was designed to prevent attempts by law to curtail freedom of speech" and is not concerned with "compelled testimony of witnesses before a congressional committee" (Br. 66-68). We have no occasion to debate with the Government whether an abstract "right to silence" or "right of privacy" actually exists (Pet. Br. 100, n. 90), because this Court's decision in the *Rumely* case and this Court's dictum in the *Quinn* case[19] leave no doubt that First Amendment protections do apply to testimonial disclosures of political activity compelled by congressional committees. It is too late in our constitutional development to argue that speech and association are less protected from repressive congressional inquiry than from repressive congressional legislation. What is open, and all that is open, is the formula for accommodating the principles of the First Amendment and congressional power to require information as a basis of legislation and the application of such a formula to the facts at bar. We turn now to this question.

3. As we point out in our initial brief (Pet. Br. 99-100), whatever formula may ultimately be devised for accommodating the power of congressional inquiry with First Amendment principles, there will always have to be a weighing of the repressive effect of the inquiry upon First Amendment rights against the Committee's need for the information sought. But the Government, like the court be-

[19] "Still futher limitations on the power to investigate are found in the specific *individual guarantees of the Bill of Rights*, such as the Fifth Amendment's privilege against self-incrimination which is in issue here." *Quinn* v. *United States*, 349 U.S. 155, 161. (Emphasis supplied.)

low, refuses to make any such weighing of the conflicting interests.' Nowhere does the Government challenge petitioner's demonstration that the Committee's exercise of its power of exposure has seriously endangered and restrained fundamental political freedoms (Pet. Br. 100-110); nowhere does the Government answer petitioner's demonstration of absence of legislative need (Pet. Br. 110-115) except to repeat its assertions that the Committee was engaged in determining the *extent* of past Communist infiltrations into the labor movement. Instead of seeking to assist this Court in making the "accommodation of these contending principles", the Government argues that, since Communism is a fit subject of inquiry and legislation, Congress has the power to name one by one all former members of the Communist Party (Br. 23, 63). But one can no more argue that the legitimate congressional interest in the area of Communism validates all congressional investigative action in this area than one could argue that this legitimate congressional interest would validate all congressional legislative action in this field. A legitimate congressional interest in any field, including Communism, is not a license to compel testimony from anyone who happened to enter that field at any time in the past. The legislative need for the testimony must still be weighed against the repressive effect of the compelled disclosure. The Government makes no attempt to demonstrate that the balance of interests lies with the compelled disclosure sought by the Committee.

V

2 U.S.C. 192, Read Together With the Authorization of the Committee on Un-American Activities, Is So Vague and Indefinite as to Deprive Petitioner of Due Process of Law

In an effort to save the Committee's authorizing resolution from its admittedly vague and indefinite language, the

Government argues that the standards of definiteness applicable to criminal statutes are inapplicable to resolutions creating congressional committees (Br. 71). The Government does not explain just how the due process requirement that criminal statutes provide a reasonably ascertainable standard of guilt[20] is rendered inapplicable to contempt prosecutions, nor does the Government set forth any precedent supporting a special reprieve from the due process clause for criminal statutes predicated on congressional authorizing resolutions. Rather the Government relies upon the broad terms in which the jurisdiction of congressional committees are generally couched and concludes that to "judge congressional resolutions defining powers of committees by the normal standards of definiteness applicable to criminal statutes would invalidate every general assignment of committee jurisdiction and hopelessly hobble the vital work which Congress accomplishes through its committees" (Br. 72).

This calamity appeal is without substance. The general assignment dividing committee jurisdiction of legislative business within the Congress is one thing; its application to a defendant indicted for refusing to answer certain questions when subpoenaed to appear before a committee is something far different. Actually, only three committees of the House, one of them the Committee on Un-American Activities, have standing subpoena power,[21] and only the Committee on Un-American Activities makes regular use of compelled testimony; the others function regularly by staff research and voluntary testimony. It would thus hardly "hobble the vital work which Congress accomplishes through its committees" to require that the authority of

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[20] *United States* v. *Cohen Grocery Co.*, 255 U.S. 81; *Connally* v. *General Const. Co.*, 269 U.S. 385; *Herndon* v. *Lowry*, 301 U.S. 242.

[21] Riddick, *The United States Congress: Organization and Procedure* (1949), p. 196.

committees proceeding by subpoena be sufficiently clear so that a witness can reasonably ascertain whether the questions he is being forced to answer come within the committee's authorizing resolution. Indeed, one might venture the thought that if each new Congress or session of Congress had been required to define with specificity the areas into which it desired the Committee on Un-American Activities to delve, the wholesale process of unlawful exposure described in petitioner's brief (pp. 41-58) might never have been permitted to threaten free political association and activity.

What the Government is overlooking here is the distinction properly to be drawn between an exercise of the legislature's own contempt power and a criminal prosecution for failure to answer questions.[22] Where the legislature's own contempt power is utilized, the witness is haled before the bar of the House and ordered to respond to specific questions; he has a last clear chance to answer and avoid punishment after the House has itself clarified the issues. But in a criminal prosecution for failure to answer, where he has no such last clear chance, the clarity of the authorizing resolution is a matter of vital importance. If Congress chooses to inflict punishment by criminal prosecution for refusal to answer committee questions, then it should be held to accepted constitutional standards of precision in its authorizing resolutions, so that witnesses are not obliged to make uninformed guesses in deciding whether questions put to them are within the authority of the committee. Congress cannot utilize a criminal statute to enforce its will and yet deny the defendant the right to a reasonably ascertainable standard of guilt.

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[22] See *Brief for Robert M. Metcalf, Amicus Curiae*, pp. 35-37. We summarize that discussion in the text.

VI

Petitioner Has Been Deprived of His Right to a Fair and Impartial Grand Jury

A similar question concerning the grand jury was raised earlier at this Term of Court in *Ben Gold* v. *United States*, No. 137. There, as in three other recent cases,[23] this Court reversed convictions without reaching the grand jury point. As in those cases, the Court here will no doubt desire to consider first whether petitioner was properly convicted for his refusal to "inform" on past associates and will only reach this grand jury point if it should reject all of petitioner's previous arguments (Points I-V).

The Government contends (Gov't. Br. 74-76, Gov't. Br. in *Ben Gold* case 123-138) for a "strict" grand jury rule, predicated on the rationale that "an indictment is, after all, no more than an accusation",[24] that would validate all grand jury action so long as the grand jurors were representative of the community and no large segments of the population were deliberately excluded. But what this "strict" rule overlooks is that a defendant is entitled to a "*responsible*",[25] as well as a "representative", tribunal, before he may be put to trial. What petitioner's unanswered affidavit (R. 5-10) presents is the case of a grand jury rendered irresponsible by bias and prejudice against the defendant, and the wrong done petitioner and the processes of justice by an irresponsible tribunal is far more serious than that done by the unrepresentative nature of the grand jury in the exclusion cases.

We respectfully submit that the Government's proposed

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[23] *Quinn* v. *United States*, 349 U.S. 155, 170; *Emspak* v. *United States*, 349 U.S. 190, 202; *Bart* v. *United States*, 349 U.S. 219, 223.

[24] *United States* v. *Remington*, 191 F. 2d 246, 252 (C.A. 2), certiorari denied, 343 U.S. 907.

[25] *Beavers* v. *Henkel*, 194 U.S. 73, 84.

"strict" rule would be more damaging to our legal processes than would the abrogation of the requirement for grand jury indictment (in the Constitution for capital and infamous offenses and in various statutes for misdemeanors, including that involved in contempt, 2 U.S.C. § 194). For, like wholesale evasion of law, irresponsibility in the operation of established legal procedures can only result in public contempt for the "democratic ideal reflected in the processes of our courts." *Ballard* v. *United States*, 329 U.S. 187, 195. An irresponsible grand jury is worse than none.

CONCLUSION

It is respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

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APPENDIX

Since 1949 the Department of Justice has regularly published up-to-date figures on the precise membership of the Communist Party. These figures from 1949 through 1956 are: 54,174; 52,669; 51,785; 43,217; 37,000; 31,608; 24,647; 24,796; 22,663; 20,289.

"According to our best information, there is a total of 54,174 members of the Communist Party in the United States at the present time. I have here and would like to submit to the committee a chart showing the distribution of the membership in the Communist Party by districts and by states . . .

"For example, New York State has 25,000 members; California, 6,977; Illinois 3,361; Pennsylvania, 2,876; Ohio, 2,834; Michigan, 1,250; Massachusetts, 1,022; Nevada, 23; Wyoming, 10; Tennessee, 27; Alabama, 141; New Hampshire, 43; and so on."

(J. Edgar Hoover, testifying before a Senate appropriations subcommittee, February 3, 1950, "Department of State, Justice, Commerce and the Judiciary Appropriations for 1951," p. 143.)

"Faced by new restrictive laws, the Communist Party continued to go further underground during the fiscal year ending June 30, 1951, J. Edgar Hoover, Director of the Federal Bureau of Investigation said today. Estimated party membership dropped from 51,785 in the previous fiscal year to 37,000 in the period for which he reported."

(New York Times, June 25, 1952, p. 15, col. 4.)

"The membership figure as of December 31 is 43,217."

(J. Edgar Hoover, testifying before a House appropriations subcommittee, February 15, 1951, "Department of

State, Justice, Commerce and the Judiciary Appropriations for 1952," p. 336.)

"When I appeared before the committee several years ago I reported that the membership of the party in 1949 totaled 54,174. In 1950, when I appeared before the committee, it totaled 52,669. In 1951 it totaled 43,217. Today its membership is 31,608."

(J. Edgar Hoover, testifying before a House appropriations subcommittee, January 24, 1952, "Department of State, Justice, Commerce and the Judiciary Appropriations for 1953," p. 174.)

"Communist Party membership in the United States decreased in the past year, J. Edgar Hoover, Director of the Federal Bureau of Investigation, said here today. In an interview with The San Diego Evening Tribune, he stated that figures he was disclosing for the first time showed 24,647 known party members today, a decrease of 6,934 in the year . . .

"New York State was still first in party membership, with 11,695, Mr. Hoover stated. Other state totals he listed included California, 3,521; Illinois, 1,492; Ohio, 1,224; New Jersey, 1,070. No other state had more than 1,000 he said."

(New York Times, August 30, 1952, p. 26, col. 3.)

"The Communist Party today totals an estimated 24,796 members."

(J. Edgar Hoover testifying before a House appropriations subcommittee, February 25, 1953, "Department of State, Justice, Commerce and the Judiciary Appropriations for 1954," p. 137.)

"I . . . have a chart showing the above ground organizational apparatus of the Communist Party of the

United States and how they function down through State, county, sections, clubs and units.

"As of the first of this year there were an estimated 22,663 members of the Communist Party in the United States."

(J. Edgar Hoover, testifying before a House appropriations subcommittee on February 24, 1955, "Department of State, Justice, Commerce and the Judiciary Appropriations for 1956," p. 167).

"The membership of the Communist Party at the present time is estimated to be 20,289 . . .

"Of this membership, 69.11 percent, or 14,022 members, are located in 2 states—New York and California."

(J. Edgar Hoover, testifying before a House appropriations subcommittee on February 1, 1956, "Departments of State and Justice, the Judiciary, and Related Agencies Appropriations for 1957," p. 245.)

The Department of Justice is not only familiar with the exact extent of the Party's membership and its distribution geographically, but it has precise figures on infiltration of trade unions. Mr. J. Edgar Hoover has testified to this effect in Hearings Before a Subcommittee of the Senate Committee on Appropriations:

"The Communists have long advocated working through trade-unions as a means of accomplishing their ends. Forty-eight percent of the membership of the Communist Party is in the basic industry of this country."

("Department of State, Justice, Commerce and the Judiciary Appropriations for 1954," p. 146.)

Further indication of the detailed information of the Department as to the membership of the Party is furnished by its published figures as to the specific national origin of the members, their spouses and parents. Mr. J. Edgar Hoover stated in an interview in the *Pathfinder*, November 5, 1952, p. 8:

> "We recently reviewed the origins of 5,395 of the leading members of the Communist Party. The results were most interesting. Only 411 were Negroes, but of the remaining 4,984, we found that 4,555 or 91½% were either of foreign birth, married to persons of foreign birth, or born of foreign parents, while 56½% of the 4,984 traced their origins either from Russia or her satellite countries."

There can thus be little doubt that the Justice Department has for years had available the exact number of Communist Party members in the labor movement and in the country, as well as the identity of each member. Indeed, Assistant Attorney General James McInerney testified to this effect before a Committee of the House of Representatives as early as 1951:

> "The McCarran Act contemplates the disclosure of membership of the party. We have the party registered, all in our building at the present time. So that the Department of Justice is not going to get anything new when we finally achieve registration, if we ever do. We have them registered now. The only question is, it is not a public registration . . ."

("Department of Justice Appropriations for 1952," Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives, 82d Cong., 1st Sess., p. 191).

In like vein, Attorney General Brownell asserted in a nationwide radio and television address on April 9, 1954 (within days of petitioner's testimony) that the FBI has "penetrated the inner circle of the Communist Party with undercover informants. The success of the FBI in this regard has been so outstanding that the Communist Party in this country doesn't know which of its Communist members to trust." The information about the Communist Party revealed by the Justice Department over the years indicates that, if anything, the Attorney General's comments were an understatement.

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need must be supported by something better than this presumption of guilt by past political association.[116]

But even if it were conceded, arguendo, that the Committee in 1954 actually required identification of those who were Communist Party members between 1942 and 1947, still there was no legislative need for the identifications demanded from petitioner. The conclusive answer to the contention that the Committee had a need for the identification of *these individuals*, is that they all had already been identified before this very Committee, in some cases by more than one witness.[117] No cogent reason can be suggested why the Committee required public re-identification of persons who had already been identified before it, in some cases repeatedly, as former members of the Communist Party.[118] Indeed, the very implausibility of any "need" for such re-identification lends support to our earlier contention that the only realistic explanation of the Committee's actions is in terms of the exercise of its asserted function of exposure.

Congressman Francis E. Walter, the present Chairman

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[116] *Cf. De Jonge* v. *Oregon*, 299 U.S. 353; *Herndon* v. *Lowry*, 301 U.S. 242; *Schneiderman* v. *United States*, 320 U.S. 118.

[117] This Court recently indicated that it will not be receptive to an assertion of governmental need for information where the information has already been obtained. In *Slochower* v. *Board of Education*, 350 U.S. 551, 558, the Court said:

> ". . . the present case differs materially from *Garner*, where the city was attempting to elicit information necessary to determine the qualifications of its employees. Here, the Board had possessed the pertinent information for 12 years, and the questions which Professor Slochower refused to answer were admittedly asked for a purpose wholly unrelated to his college function. On such a record the Board cannot claim that its action was part of a bona fide attempt to gain needed and relevant information."

[118] As was pointed out by the dissenting judges below, any legislative need for the information demanded from petitioner "might have been served by questioning Watkins in a closed session. But the Committee questioned him at a public hearing" (R. 193).

of the Committee, has himself fully answered the argument of congressional need which the Government now asserts on behalf of his Committee. During the Committee's 1951 Hollywood hearings when a witness, Larry Parks, was unwilling to re-identify former members of the Communist Party, Congressman Walter stated:

> "*How can it be material to the purpose of this inquiry to have the names of people when we already know them?* Aren't we actually, by insisting that this man testify as to names, overlooking the fact that we want to know what the organization did, what it hoped to accomplish, how it actually had or attempted to influence the thinking of the American people through the arts?" (Emphasis supplied.) *Communist Infiltration of Hollywood Motion-Picture Industry*—Part I (82d Cong., 1st Sess.), p. 93.

In sum, it cannot be that mere membership in a political party subsequently found to be dominated by persons with subversive and illegal motivations, subjects members, years after they have discontinued membership, to repeated public identification before the same congressional committee. Nor is there justification for compelling former associates to become the agents of such repeated re-identifications. If the original identification of these thirty persons added anything necessary to the Committee's information about the character or nature of the Communist Party, at the very least the informational need was met once these specific individuals had been identified before the Committee. A contrary rule would serve as justification of a legislative trial and preclude any meaningful accommodation of the congressional power of inquiry to the guarantees of the First Amendment.

D. *The Decision of the Court Below*

Where exercise of the congressional power of inquiry infringes upon First Amendment freedoms, courts must undertake an accommodation and harmonizing of these conflicting principles. The degree of infringement on individual freedom, on the one hand, must be measured against the immediacy or urgency of the informational need on the other. It is precisely this weighing and balancing of the interests of the individual and of the state that the court below refused to undertake.

Nowhere in the opinion below is there any discussion of the abridgment of First Amendment rights set out above. The court summarily disposes of First Amendment issues (R. 182) not only without any weighing of conflicting principles, but without even finding that the Committee had a need, either remote or urgent, for the information it sought from petitioner.[119]

Certainly the statement of the court below that "the questions asked Watkins could be asked for a valid legislative purpose" (R. 178) does not constitute a determination by the court of a legislative need for answers to the questions. A possibility of a legislative purpose is not the equivalent of a legislative purpose (see pp. 70-76, *supra*); and a legislative purpose is not the equivalent of legislative need. What we have, therefore, is a statement two steps removed from the urgent need required to justify far-reaching infringements of First Amendment rights.

Certainly, too, the court's statement that the purpose of the Committee's hearing was related to an amendment to the Internal Security Act (R. 181), cannot be deemed the equivalent of a determination of need. We have already shown that the questions petitioner refused to

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[119]A persuasive disposition of the question of legislative need appears in the dissenting opinion (R. 191-193).

answer actually had no relationship to this amendment (pp. 70-76, *supra*). The statement of the court below can thus be explained only on the assumption that the court was again referring to the hypothetical possibility of a legislative purpose. Again, as indicated in the previous paragraph, such a possibility of a legislative purpose is not the equivalent of a determination of legislative need.

Probably the main reliance of the court below was upon its statement "that, having power to inquire into the subject of communism and the Communist Party, Congress has the authority [120] to identify individuals who believe in communism and those who belong to the Party, since the nature and scope of the program and activities of the Communist Party depend in large measure on the character and number of its adherents . . . Personnel is part of the subject" [121] (R. 182). But, whatever justification the theory that "personnel is part of the subject" might have provided for the identification of Communists in strategic

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[120] The court below appears to have confused congressional "authority" with congressional need (R. 182). We have demonstrated earlier in this brief (Points I-III) that no such authority exists. But, even if the authority did exist, it would not in and of itself justify the infringement of First Amendment rights. It takes urgent "need", rather than legal "authority", to support such infringements.

[121] It has been pointed out how limitless is the incursion on the privacy of ordinary citizens which might be justified on this theory. See Taylor, *Grand Inquest*, pp. 164-165. Indeed, in the instant case the Committee sought to identify persons who were merely past members of the Communist Party—ordinary citizens who were not even members of a labor union. See n. 69, *supra*. The extreines to which identification can be carried for purposes of harassment are well illustrated by current efforts in some of the states to force a disclosure of the names of all members of the National Association for the Advancement of Colored People within their borders. The First Amendment issue raised by this attempted wholesale disclosure of NAACP membership is now being litigated in a number of southern states. See, e.g., *National Association for the Advancement of Colored People* v. *State of Alabama, on the relation of John Patterson, Attorney General*, now pending in the Supreme Court of Alabama.

positions when Congress first initiated investigations into Communist activities, it cannot now support continued identification of those who were Party members long ago. Moreover, it certainly provides no justification for *re-identifications* which can shed no light upon either the former or the present "nature and scope of the program and activities" of the Communist Party. No pervasive need justifying abridgment of First Amendment rights arises from the generalization that "personnel is part of the subject."

In sum, neither the hypothetical relevance of the Committee's questions nor the generalization that personnel is part of the subject can supply an actual need for the identification and re-identification of one-time Communists or "support an exercise of the investigative power that puts every man's past record of association and opinion to the test of either public or secret inquisition under oath."[122]

We do not challenge the contention that the substantiality of congressional need for information may, on occasion, justify the compulsion of disclosures which normally would be protected under the First Amendment. But we do say that unjustifiable abridgment of liberties of association and expression, forbidden to Congress by the First Amendment, may no more be achieved by the legislature's power of inquiry than by its power to legislate. Where the infringement on basic liberties is as patent and far-reaching as it is in the instant case, and the congressional need is as remote and fanciful as the need presently asserted, constitutionally-guaranteed freedoms must prevail. In the *Rumely* case this Court reiterated, in the context of the congressional

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[122] Taylor, *Grand Inquest*, p. 167.

power of inquiry, Justice Holmes' admonition that all rights

> "are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached."

In petitioner's case, under even the most liberal view of Congressional authority to obtain legislative information, the point has been reached where First Amendment principles "become strong enough to hold their own."

V

2 U.S.C. 192, Read Together With the Authorization of the Committee on Un-American Activities, Is So Vague and Indefinite as to Deprive Petitioner of Due Process of Law

Section 192, under which petitioner was indicted and convicted, punishes refusals to answer questions "pertinent to the question under inquiry" by a Committee of either House of Congress where the question under inquiry is within the power of the Committee to investigate.

There is no independent authority, comparable to a judge when questions are asked by a grand jury, to which a witness can appeal to make the determination whether the announced "question under inquiry" is within the authority of the committee before which he is testifying. The witness in any congressional inquiry must resolve for himself whether a question by the committee is part of an *authorized inquiry* and this he can only do by reference to the statute or resolution purporting to authorize the investigation. Therefore, the contempt statute must be read together with the enactment setting forth the authorization of the particular committee, in order to decide whether the

witness was able to make the determination that the inquiry was authorized with the accuracy required by the due process clause.

This process of combined construction has been used in determining whether a statute was unconstitutionally vague (see e.g., *Kraus & Bros.* v. *United States*, 327 U.S. 614, 620), and is, indeed, the only method of determining the constitutional question here presented. In the *Rumely* case, for example, this Court would not have been able to reach the conclusion that Section 192 was, or might be, unconstitutional, as to Rumely without reading it together with the authorizing resolution involved in that case.

By this combined construction, the criminal provision which must be considered for the application of the void for vagueness doctrine would read in substance about as follows:

> It shall be a crime punishable by a fine of not more than $1,000 and imprisonment for not more than one year for any witness before the Committee on Un-American Activities of the House of Representatives to refuse to answer any question pertinent to any question under inquiry about which the Committee was authorized to inquire under its statutory authority to investigate the extent, character and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda attacking the principle of the form of government as guaranteed by our Constitution, and related questions.

On its face this composite statute provides no reasonably ascertainable standard of guilt and is too vague and indefinite to meet the standards of due process under the Fifth Amendment. *United States* v. *Cohen Grocery Co.*,

255 U.S. 81; *Connally* v. *General Const. Co.*, 269 U.S. 385; *Herndon* v. *Lowry*, 301 U.S. 242. The double basis for the requirement of adequate certainty is the individual's need for notice as to the standards of conduct which he must follow, and the prosecutor's need for an adequate guide in enforcing the law. Neither basis is satisfied here. Under the composite statute quoted above, "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453.

Although it is beyond dispute that the Committee has expanded its investigations far beyond the literal reading of its authorization, it is far from clear what the present limits of the authorization are actually supposed to be and what the courts may fairly construe them to be in determining whether or not there has been contempt of the Committee in failing to respond to questions not within the literal mandate of the Committee. See n. 123, p. 122, *infra*. The emphasis, in practice, has shifted away from propaganda; the phrase rarely appears in any but a formal manner. Instead the Committee tends to describe its area of investigation as "subversive and un-American activities" (R. 125, *Annual Report for 1951*, p. 5). Congressman Doyle, a member of the Committee, spoke of exposing "subversive activities" in reporting to the Congress during the debate on the 1954 appropriation for the Committee (R. 168, 100 Cong. Rec. 2174, daily issue). The Chairman, opening the Chicago hearings of which petitioner's questioning was a part, used the phrase "extent and success of subversive activities directed against these United States . . ." (R. 43.) We submit that a witness deciding whether he may rightfully refuse to answer a particular question cannot possibly determine from such statements the present limits of the Committee's authority with anything like the degree of certainty required for a criminal statute.

The Committee asserts the authority to investigate "subversive" and "un-American" activities.[123] Probably no two words in common usage today have as varying meanings to different people. The Committee, in an obvious effort to cure this vagueness, recently defined "un-American or subversive activity" as follows: "That activity which attacks the principle of the form of government as guaranteed by our Constitution is un-American and subversive by seeking to overthrow it by use of force and violence, in violation of established law."[124] Yet the Committee has never applied and does not now apply this standard in its operations. Indeed, under the heading "Subversive Activities" in the very public relations pamphlet containing the above definition, the Committee went far beyond the overthrow of the government by force and violence and went into "Communist fronts" (p. 21); Fascists or "hate" groups (p. 21); "fellow-travelers" (p. 24); teachers who claim the Fifth Amendment (p. 23); etc.

The Committee's investigations themselves indicate that it treats its authority and the phrase "subversive activities" to mean whatever comes under the personal interdiction of its members in the way of unorthodox opinions and activities. Listing only a few of the Committee's hearings and reports, investigations have included as their focal objects the Office of Price Administration (1945), the

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[123] Of course, for the Court to reach this point, it must have construed the Committee's authorization as going far beyond propaganda activities (see pp. 76-96 *supra*). Any such interpretation would have had to be based on a Congressional ratification of the Committee's broad assertions of power. We assume, therefore, for purposes of this part of the brief, that the Court has accepted the Committee's assertions of power as ratified by the Congress and incorporated in its authorization. This very holding of ratification aggravates the uncertainty posed for one such as petitioner. He cannot rely on statutory language but must examine complex issues of implicit, rather than explicit, ratification to determine what constitutes contempt of this Committee.

[124] This is YOUR House Committee on Un-American Activities, p. 2.

CIO Political Action Committee (1944), labor unions (1947, 1949, 1950, 1953, the movie industry (1947, 1951, 1952), Oliver Edmund Clubb, an employee of the State Department (1951), Dr. E. U. Condon (1952), Bishop Oxnam (1953), The Methodist Federation for Social Action (1952), the theatre (1955), the Fund for the Republic (1956).

The scope of the statute is in no way narrowed, nor is its vagueness in any way cured, by the announced purpose of the particular hearing at which petitioner testified. On April 29, 1954, the date on which petitioner appeared, the Chairman simply announced that "the hearing this morning is a continuation of the hearings which were held in Chicago recently" and counsel started to ask petitioner questions (R. 70). Nor does the announced purpose in Chicago afford any enlightenment even if it had been read to petitioner (R. 43-44). The Chairman referred to "subversive activities" and to the fact that Chicago is not necessarily better or worse than other cities, and stated that "subversive infiltration" was under consideration (R. 44). Petitioner could have found no guidance in this statement in making his determination whether the subject under inquiry was within the broad interpretation of the Committee's authority. When petitioner questioned "the proper scope of . . . [the] committee's activities," (R. 85), no clarification was forthcoming but only a direction to answer (R. 86). Neither the statute nor its interpretation by the Committee was sufficiently definite to enable the petitioner to determine the scope of the Committee's authority.

Petitioner had to decide for himself if the Committee had authority to require him to state publicly whether 29 individuals had been members of the Communist Party 10 years earlier; he had to decide whether the fact of one-time membership of persons who had "long since removed themselves from the Communist movement" (R. 85) was

within the scope of an investigation of "un-American" and "subversive" activities. Petitioner might reasonably have believed that past membership was not an un-American activity both because it had been engaged in by many Americans and because it had been perfectly legal at the time in question. Likewise, petitioner might reasonably have believed that past membership was not subversive both because of its then clear legality and his own failure to observe any disloyalty on the part of these individuals. No questions were asked petitioner about any unlawful or disloyal conduct by him or any of the 29 persons and he may very well have believed that, in the absence of some unlawful or disloyal conduct, the fact of membership in the years 1942 to 1947, before the Cold War, was not within the terms "un-American" or "subversive". Apparently petitioner believed that present membership might well be deemed un-American or subversive as he not only agreed to, but did, name present members. The distinction petitioner apparently drew between present and long past membership can hardly be deemed an unreasonable one. Only by asserting the proposition that any connection with the Communist Party, no matter how long ago and without reference to any illegal or disloyal activities, is un-American and subversive, can one say that these terms have sufficiently clear meaning so that petitioner could have told with reasonable certainty whether he had to answer the questions put to him by the Committee.[125]

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[125] Limiting the applicability and effective use of Section 192 because of its vagueness and indefiniteness in the case of the Committee on Un-American Activities will not deprive Congress of the power to compel pertinent testimony. Congress can, as it has on occasion, authorize its committees to compel pertinent testimony by applying for a court order, which would permit a judicial determination of the pertinence of the testimony sought before the witness is subject to contempt proceedings. This is the standard procedure provided for investigations conducted by administrative agencies (see Taylor, *Grand Inquest* (1955), pp. 260-262)

VI

Petitioner Has Been Deprived of His Right to a Fair and Impartial Grand Jury

We turn now to the grand jury question raised, but left undecided, in *Quinn* v. *United States*, 349 U. S. 155, 170; *Emspak* v. *United States*, 349 U. S. 190, 202; and *Bart* v. *United States*, 349 U. S. 219, 223. As in those cases, the Court here will no doubt desire to consider first whether petitioner's refusal to "inform" on former associates, in the circumstances of this case, constituted a violation of the contempt statute and will only reach this grand jury point if it should reject all of petitioner's previous arguments (Points I-V).

In the trial court, petitioner moved for a dismissal of the indictment on the ground that, by virtue of the fear instilled by the government employees security programs, less than 12 grand jurors were free from bias against him and able to cast their votes impartially, or for a preliminary hearing at which he could prove the essential facts supporting the motion. Petitioner, by an affidavit of counsel attached to his motion for dismissal or preliminary hearing (R. 5, 9-10), made an affirmative showing that the personal bias and fear, which this Court had found wanting in *Dennis* v. *United States*, 339 U. S. 162, actually existed on the part of the grand jurors in this case (R. 10).

The affidavit of counsel attached to petitioner's motion related that "more than 11 members of the grand jury which voted this indictment are biased and prejudiced against the

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and would remove the unfairness in a witness having to make a decision on pertinence at his peril. Certainly, in the absence of some such procedure for court orders, Congress should be required to provide authorizing resolutions sufficiently definite so that a witness can know with reasonable certainty whether the questions put to him are within the committee's authorization.

defendant and unable to exercise an independent judgment, by reason of the fact that they, or close associates, including relatives, were employed by or were seeking employment with the United States or the District of Columbia Government" (R. 5); that 11 of the 23 members of the grand jury, including the foreman and deputy foreman, were employed by the Government of the United States (R. 5); that 2 others were employed by the District of Columbia Government (R. 5); that still others had close associates and relatives who were employed by the United States or the District of Columbia (R. 5); that still others sought employment there (R. 5); and that 7 years of successive loyalty and security programs had instilled in United States and District of Columbia employees and their close associates and relatives a fear of creating the appearance of sympathetic association with left-wing or Communist causes so strong as to prevent them from casting their votes impartially and amounting "to an actual bias against any person accused of some act which might impede the hunt for supposed Communists" (R. 8). Moreover, the affidavit states that, at hearings under the security programs, persons under investigation were asked their opinions of the *Hiss, Remington, Coplon and Rosenberg* cases and their attitude towards the House Committee on Un-American Activities (R. 9). "If," the affidavit continues, "the mere opinions of persons who have not even participated in a case thought to affect the security of the government are treated by the authorities as relevant to a decision on security or loyalty status, the grand jurors would recognize that a vote against an indictment in this case would be harmful to their security status" (R. 9).

The Government filed no answering affidavit challenging any of these facts. The District Court, however, denied petitioner's motion without opinion (R. 10-11). The Court

of Appeals, although this question had been placed squarely before the court by petitioner (Brief for Appellant, pp. 72-74), omitted any reference to the grand jury question in its decision. The minority had no occasion to refer to this point, since they voted for reversal of the conviction on other grounds.[126]

The refusal of the courts below to dismiss the indictment or grant a preliminary hearing on the ground of grand jury bias and prejudice created by the government employees security programs deprived petitioner of his right to a fair and impartial grand jury (*Cassell* v. *Texas*, 339 U. S. 282), acting as a "responsible tribunal." *Beavers* v. *Henkel*, 194 U. S. 73, 84. "Preservation of the opportunity to prove actual bias is a guarantee of a defendant's right to an impartial jury." *Dennis* v. *United States*, 339 U. S. 162, 171-172; *Morford* v. *United States*, 339 U. S. 258, 259. Whether a defendant's right to a fair and impartial grand jury be based on the Constitution or upon the statute requiring grand jury action for the misdemeanor involved in contempt (see 2 U.S.C. § 194), or because the Government chose that method of proceeding, the right to a fair and impartial grand jury is undeniable. As the Government has stated elsewhere, while "the Fifth Amendment requires indictments only in capital 'or other infamous' crime, . . . where the Government has chosen or been compelled to proceed by indictment, the accused probably has standing to move to dismiss an indictment found by a disqualified body, just as he would have a right to attack an information filed upon the oath of a disqualified prosecuting officer." [127]

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[126] The position of the minority judges favoring reversal on the grand jury point under similar circumstances is set forth in their dissenting opinion in *Quinn* v. *United States*, 203 F. 2d 20, 26.

[127] The Government's statement was made in the court below in *Emspak* v. *United States*, 203 F. 2d 56 and is quoted in *Quinn* v. *United States*, 203 F. 2d 20, 26, n. 2.

(i) In the District Court, the Government, filing no answering affidavit and thus admitting the facts alleged in petitioner's affidavit for purposes of the motion to dismiss, relied upon this Court's decision in *Dennis* v. *United States*, 339 U. S. 162. But the Government's reliance on *Dennis* was misplaced. There Mr. Justice Minton, writing for the majority, stated that "no question of actual bias is before us. The way is open in every case to raise a contention of bias from the realm of speculation to the realm of fact" (p. 168). Clearly petitioner's motion and unanswered affidavit raise the question of bias "to the realm of fact." Mr. Justice Minton went on to state that "as far as it appears, the [trial] court was willing to consider any evidence which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal, but no such proof was made" (p. 168). Exactly such proof was supplied in the affidavit attached to petitioner's motion for dismissal—namely, that investigatory agencies of the Government would take cognizance of a vote against the Government since they had even taken cognizance of *opinions* concerning cases in which the Government was involved. Furthermore, the majority pointed out in *Dennis* that the loyalty program was then only three months old and "apparently not the subject of anticipatory fear by these jurors" (p. 170). Here, however, as the affidavit filed with petitioner's motion stated, "more than seven years of administrative implementation [of the loyalty and security programs] has created a real and personal fear" (R. 10).

(ii) In the Court of Appeals the Government suggested that the grand jury bias was not prejudicial because the essence of petitioner's defense at the trial was a "legal justification" rather than a factual denial (Brief of Appel-

lee, p. 18), thus making indictment certain. But this argument disregards the rule that where grand jury selection is likely to result in unfairness, "*reversible error does not depend on a showing of prejudice in an individual case*" because

> "The injury is not limited to this defendant—there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts." *Ballard* v. *United States,* 329 U.S. 187, 195.

Where the method of selecting grand and petit jurors presents the possibility of bias, this Court has from the first declined to look to the actual effect of the discrimination in the particular case, as long as the defendant was in the class likely to be injured. *Strauder* v. *West Virginia,* 100 U.S. 303; *Ballard* v. *United States, supra; Cassell* v. *Texas, supra; Thiel* v. *Southern Pacific Co.,* 328 U.S. 217.

It is no answer to state that a fair grand jury would also have indicted. *Cf. Tumey* v. *Ohio,* 273 U.S. 510, 535. Procedural due process assures that even a correct result may not be achieved by odious means. As was stated recently in a related context: "The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts." *Communist Party* v. *Control Board,* 351 U.S. 115, 124. Unless the guarantee of an unbiased grand jury is now to be limited to persons likely to have avoided indictment before a fair grand jury, the Government's argument merits no consideration.

(iii) In this Court, in its Brief in Opposition to the Petition, the Government, by cross-reference to its Brief in Opposition in *Ben Gold* v. *United States,* No. 137, October

Term, 1956, pp. 39-40, presented what appears to be an additional argument as follows:

> "The absence from normal grand jury processes of the *voir dire* examination, the historic guarantee against bias and partiality on the part of members of the petit jury, indicates the fundamental difference between the two kinds of jury. It attests the conviction, resting on centuries of Anglo-American experience, that the interest in expeditious administration of criminal justice is best served, without any sacrifice of society's equally fundamental interest in assuring fair trials to all accused persons, if the historic procedure for guaranteeing jurors free from bias and partiality is restricted to the selection of those who actually try the accused. This accommodation of interests is in keeping with the traditional concept of the grand jury as a shield between prosecutor and persons accused of crime, free, however, of various guarantees historically associated with the trial itself. Cf. *Costello* v. *United States*, 350 U. S. 359."

It is not entirely clear whether the Government is now contending that petitioner is not entitled to a *voir dire* examination of the grand jurors in order to prove bias, or that petitioner is not entitled to a grand jury in which at least 12 grand jurors concurring in the indictment are free from bias and prejudice against him.

If the Government's argument is limited to the suggestion that petitioner is not entitled to a *voir dire* examination of the grand jurors, it has no application here. Petitioner seeks no such examination. Petitioner, by his counsel's affidavit (R. 5-10), set forth a *prima facie* case of bias and prejudice of a majority of the grand jurors. The Government, relying upon the *Dennis* case, failed to file an

answering affidavit. Thus the facts set forth in the affidavit for petitioner must be taken as true. No one in this case is contending for a *voir dire* examination of the grand jurors. Petitioner moved for a dismissal of the indictment on the ground that there were less than 12 members of the grand jury concurring in the indictment who were free from prejudice or bias against him "by reason of the facts stated in the affidavit" and, in the alternative, if these facts should be challenged, requested a hearing to give further proof in support of the affidavit (R. 4). This is a far cry from a request for a *voir dire* examination of the grand jurors.

If the Government is suggesting the broader proposition that petitioner had no right to a grand jury containing at least 12 jurors free of bias and prejudice against him—and we are loath to assume that the Government is suggesting this point—then it would indeed be making a mockery of the grand jury process. Petitioner's motion and affidavit do not present a mere technical defect in the grand jury process;[128] they present a case of a grand jury rendered irresponsible by bias and prejudice against the defendant. Certainly the wrong done petitioner and the processes of justice is far more serious than that done in the exclusion cases; in those cases there was a mere possibility of bias whereas here the unanswered affidavit of petitioner sets forth facts indicating an actually biased and prejudiced grand jury. Exclusion from the grand jury of persons possibly biased in favor of an accused is far less prejudicial than the inclusion thereon of those actually biased against him. We submit that the fact that the grand jury process

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[128] Of course, even some technical defects invalidate grand jury action. It is interesting to note, for example, that under the Federal Rules of Criminal Procedure, petitioner is entitled to 12 legally qualified grand jurors concurring in the indictment. Rule 6(b)(2). It could hardly be contended that he is not entitled to 12 grand jurors free from bias and prejudice.

is not surrounded by all the "guaranties historically associated with the trial itself" does not mean that it is surrounded by none.

Conclusion

It is respectfully submitted that the decision of the court below should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Introduction

The Court will no doubt find more of the "retort courteous" than the direct joining of issues in the Government's brief. Indeed, the reader of the Government's brief, lulled by the constant repetition of such plausible phrases as the "respect" and "deference" owed by the judiciary to a "coordinate branch of the Government," might at first blush wonder just what all the excitement was about in petitioner's brief. But no amount of indirect response and plausi-

ble phrases can obscure the startling fact that the Government's brief in this Court suggests a new theory of the Committee's purpose in interrogating petitioner and a set of legal doctrines adding up to a request for judicial abdication in the area of Congressional investigations.

Initially one might pause to reflect on the irony of the Government's reliance on the doctrine of separation of powers in seeking to justify the conduct of the Committee on Un-American Activities. For there is probably no committee in congressional history that has evidenced less concern to avoid encroachments on the powers of the coordinate branches of Government or has been quite so ready to pronounce judgments of guilt upon individuals and organizations and to procure the application of social and economic sanctions to the guilty (Pet. Br. 41-58). But the irony of the Government's position is far less significant than its attempted utilization of judicial "respect" and "deference" for congressional investigative action as a means of making more palatable its new theory of the Committee's purpose in interrogating petitioner and its advocacy of mechanical judicial enforcement of committee action.

The Government's new theory of the Committee's purpose in interrogating petitioner was apparently born of the need to find a valid congressional purpose not obviously inconsistent with the realities of petitioner's interrogation by the Committee. Petitioner's brief made clear that the Committee, in interrogating him, had indicated its total lack of interest in Communist techniques or activities in labor unions or in the effect of existing or proposed legislation upon these techniques or activities (Pet. Br. 58-64, 70-76). Thus forced to concede that the Committee was not concerned with "the general nature of Communist infiltrative techniques *vis-à-vis* labor unions" (Gov't. Br. 18) or "the nature of 'Communist techniques in labor unions'" (Gov't. Br. 39), the Government turned to the theory that

the Committee's purpose was to learn "the *extent* of the Party's penetration into these unions" (Gov't. Br. 18, 39) by determining the "numbers and identities of individuals who belong to the Party" (Gov't. Br. 34). In brief, the Government appears to be saying now that the Committee's purpose in interrogating petitioner was to determine the mathematically-exact extent of Communist penetration into labor unions by naming and numbering each Communist in the labor movement. After 10 years of justifying committee exposure with the *Barsky* rationale that "personnel is part of the subject" (see *Barsky* v. *United States*, 167 F. 2d 241, 246 (C.A.D.C.), certiorari denied, 334 U.S. 843), the Government is finally proclaiming, what it has long denied, that "personnel is *the* subject."

The Government leaves many things unexplained in its development of this new theory that the Committee's purpose was to determine the extent of Communist penetration into labor unions by learning the *numbers and identities* of all the Communists therein.[1] For example, the Government's brief is wholly silent on the question whether the extent with which the Committee was concerned was the current extent of penetration at the time of the Committee hearing in 1954 or was the extent of penetration during the years of petitioner's familiarity with the subject, 1942-1947. But quite clearly the Committee's interest in interrogating petitioner could not have been current extent, for the only evidence petitioner could give the Committee and the only evidence it asked from him[2] was with respect to past membership; it can hardly be seriously contended that the Committee sought to obtain the current extent of Communist

[1] The Government fails to explain the notable inconsistency between the alleged Committee purpose to determine the extent of labor union penetration and the fact that a number of the individuals about whom petitioner was asked were not even union members (See Pet. Br. 85, n. 69).

[2] The Government concedes that "the Committee's questions related to past Party membership" (Gov't. Br. 23, 65).

penetration by some sort of genealogical tracing from past to present. Furthermore, it is obvious that the Committee was not interested in the mathematics of current penetration, since complete figures as to the current extent of Communist membership are regularly published by the Department of Justice and the location, vocation and national origin of Communist membership are available to the Congress from the FBI (Appendix, pp. 27-31, *infra*). Indeed, as early as 1951, the Department of Justice had every Party member "registered" in its building (p. 30, *infra*).

The Government's brief is equally silent on any link between the numbers and identities of Communists in labor unions in the years 1942-1947 and any legislation enacted, proposed, considered or possible. Nor could any such link have been developed, for the exact numbers and identities of labor Communists in the years prior to the Taft-Hartley anti-Communist oath provisions of 1947 could hardly assist the Committee in considering legislation many years later in 1954. After 16 years of action on the basis of the Committee's knowledge of the general dimensions of the extent of Communist penetration into different areas,[3] the Court is now asked to accept this new theory of the Committee's interest in mathematically-exact numbers and identities without a word of explanation for this change in operating procedure by the Committee or the citation of a single hearing before or after petitioner's appearance where this effort to obtain exact extent was asserted, initiated, carried

[3] It was obviously to the general dimensions of the problem, not to mathematically-exact numbers and identities, that the authorizing resolution (to investigate "the extent, character and objects of un-American propaganda activities") and the Chairman's opening statement ("to ascertain the extent and success of subversive activities directed against these United States" (R. 43)) were directed. Indeed, the phrases "un-American propaganda activities" and "subversive activities" are too vague to be capable of measurement in terms of numbers and identities.

forward or terminated. It taxes credibility to suggest that the Committee was genuinely attempting to determine extent by a retroactive census.

That the Government's present theory of the Committee's purpose in interrogating petitioner was developed to explain away the Committee's lack of interest in anything remotely connected with legislation is evidenced not only by its significant silence as to the details of its present theory, but also by the tardy arrival of this theory on the scene. What the Government now offers as the Committee's purpose was merely a hypothetical possibility of a purpose as late as its Brief in Opposition in this Court. There the Government stated:

> "*If* the Committee had the additional (and more general) aim of ascertaining the number of Communists at a particular period in our recent history, that, too, would be a valid subject of inquiry . . . ." (Gov't. Br. Opp. 17) (Emphasis supplied.)

Earlier, in the trial and appellate courts, the Government contended that the purpose was to investigate Communist infiltration into labor unions (R. 19; Government Brief in Court of Appeals, p. 11) without ever suggesting that the Communist infiltration with which the Committee was concerned was the names and numbers of all the players rather than their activities and techniques.

But probably the simplest answer to the Government's contention that the Committee's purpose was to determine the numbers and identities of Communists in labor unions is that the Committee nowhere suggested this purpose. On the contrary, by failing to ask petitioner for the names of all the Communists in his union during his period of cooperation with them or for his estimate of the total number of Communists at that time, the Committee made abundantly

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions in the Court of Appeals, sitting en banc, have not yet been reported. (Pet. 39-66).[1]

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[1] The appeal was first heard by a three judge division composed of Chief Judge Edgerton and Judges Bazelon and Bastian. The division reversed the conviction, with Judge Bastian dissenting. The opinion of the division was substantially the same as the dissenting opinion on the decision of the court en banc.

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1956 and a petition for rehearing was denied on May 22, 1956. By order of Mr. Chief Justice Warren, the time for filing a petition for a writ of certiorari was extended to July 20, 1956, and the petition was filed on July 19, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities, with power to investigate the extent of un-American propaganda activities, and having before it for consideration a proposed amendment to the Internal Security Act of 1950 relating to Communist infiltration into labor union activities, could require petitioner, a labor union official, to testify as to whether certain persons were former members of the Communist Party engaged while they were Communists in union activities.

2. Whether, in a proceeding in which petitioner sought the dismissal of the indictment, he was entitled to a hearing to prove that Government employees, of whom there were some on the indicting grand jury, are biased as a class in cases involving Communism.

STATUTES AND RESOLUTION INVOLVED

Rev. Stat. § 102, as amended, 2 U.S.C. 192:

> Every person who having been summoned as a witness by the authority of either House of Con-

gress, to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Sec. 121(a) and (b) of the Legislative Reorganization Act of 1946, 60 Stat. 812, 822, 823, 828, provides in part:

Section 121(a), Rule X, of the Rules of the House of Representatives is amended to read as follows:

"Rule X

"Standing Committees

"(a) There shall be elected by the House, at the commencement of each Congress, the following standing committees:

"* * *

"17. Committee on Un-American Activities, to consist of nine Members

"* * *"

(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"Rule XI

"Powers and Duties of Committees

(1) All proposed legislation, petitions, memorials, and other matters relating to the subjects listed under the standing committees, named below shall be referred to such committees respectively:

"* * *

"(q)(1) Committee on Un-American Activities

"A. Un-American Activities

"(2) The Committee on Un-American Activities as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses, and of the production of such books, papers and documents, and to take such testimony, as it deems necessary.

> Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman and may be served by any person designated by any such chairman or member.
>
> "* * *"

H. Res. No. 5, 83rd Cong., 1st Sess. (1953) (99 Cong. Rec. 15, 18) adopted the provisions of the Legislative Reorganization Act as the rules of the 83rd Congress.

STATEMENT

Petitioner was indicted on seven counts for refusing to answer pertinent questions before a Congressional subcommittee in violation of Section 192, Title 2, United States Code (R. 2-3).[2] Petitioner waived his right to a trial by jury (R. 16) and was found guilty on all counts, (R. 17-18). He was fined five hundred dollars and sentenced to imprisonment for one year (R. 18). Execution of the one year imprisonment term was suspended and petitioner was placed on probation (R. 18). On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was affirmed by a decision (per Bastian J.) of the court sitting en banc, Chief Judge Edgerton and Judge Bazelon dissenting (Pet. 39).

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[2] See H. Res. No. 534, 83rd Cong., 2nd Sess. (1954) (Gov. Ex. 4, R. 68) directing the Speaker of the House of Representatives to certify the report of petitioner's contempt to the United States Attorney.

The facts may be summarized as follows:

The Legislative Reorganization Act of 1946 made provision for the House Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress (60 Stat. 812, 822, 823). According to the Act, all matters relating to un-American activities were to be referred to this committee which was authorized to investigate un-American propaganda activities in the United States and "all other questions in relation thereto that would aid Congress in any remedial legislation" (60 Stat. 812, 823, 828). This Act was adopted as part of the rules of the House by H. Res. No. 5, 83rd Congress, 1st Session (1953) (99 Cong. Rec. 1518).

In large part as a result of investigations and recommendations by the Committee, the Internal Security Act of 1950 (64 Stat. 987) was enacted (R. 43). At the time of petitioner's contempt, the Committee was considering an amendment to this Act (R. 44). Briefly, the proposed bill denied the use of the National Labor Relations Board to labor organizations which the Subversive Activities Control Board found, after suitable hearings and procedures, to be Communist-controlled action groups (R. 44). The Committee was also making a study of bills dealing with the admissibility of evidence secured from confidential devices in cases involving national security (R. 44). In connection with this and other proposed legislation, the Committee conducted hearings in various areas to investigate the extent of Communist infiltration into labor unions (R. 26, 43, 44).

In March 1954, the Committee was conducting hearings in Chicago (R. 42). At the commencement of the hearing, Chairman Velde explained that a purpose of the Committee, as directed by Congress, was to ascertain the extent and success of subversive activities within the United States and on the basis of its investigations to make recommendations for new legislation (R. 43). He pointed out that during the fifteen years in which the Committee had been in existence it had made forty-seven recommendations to Congress and only eight of these recommendations had not been acted upon (R. 43).[3]

He also described summarily the proposed amendment to the Internal Security Act of 1950, referred to above, and other legislation currently pending before the Committee (R. 44). Concluding, he stated, "Every witness who has been subpoened to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States" (R. 44).

Petitioner and another witness whom the Committee sought to question in Chicago could not be found (R. 70). As a result, when the hearings were continued in Washington (R. 70), petitioner was summoned and appeared before the Committee on April

[3] Among the eight not acted upon was that providing that witnesses appearing before Congressional committees be granted immunity from prosecution on the information they furnish (R. 43). Subsequently, Congress passed the Immunity Act of 1954, 68 Stat. 745, amending 18 U.S.C. 3486. See *Ullman* v. *United States*, 350 U.S. 422.

29 (R. 70). Petitioner was sworn and testified that from 1935 to 1953 he had been employed by the International Harvester Company at East Moline, Illinois (R. 72). However, from 1942 to 1953 he had been on leave from the job under a labor union contract (R. 72). From 1942 to 1949 he was employed by the Farm Equipment-CIO International Union (FE) (R. 72). During this time he rose to the position of president of the FE-CIO District No. 2 which was made up of a geographical area around the Quad Cities, including Canton, Dubuque and Rock Falls (R. 77). When the Farm Equipment Workers merged with the United Electrical, Radio and Machine Workers in 1949, he continued with the latter union until 1953 (R. 72). In 1953 petitioner left to go with the United Auto Workers-CIO International Union as an organizer (R. 72).

Petitioner was then questioned concerning the testimony of two witnesses, Donald O. Spencer and Walter Rumsey, who had appeared before the Committee in September 1952 (R. 73) and in March 1954 (R. 77), respectively, and who had identified petitioner as a Communist. Spencer, who had admitted being a Communist from 1943 to 1946, had testified that he had been recruited into the Party by Walter Rumsey with the endorsement and prior approval of petitioner, district vice-president of the FE at that time (R. 73). In Chicago, Rumsey had testified that he had been recruited into the Communist Party by petitioner (R. 77) and at the beginning had paid dues to him (R. 83). Later, Rumsey stated that he had

collected dues from petitioner who had assumed the name of Sam Brown (R. 84).

Petitioner admitted knowing Spencer and Rumsey (R. 73, 77, 78, 79) and was familiar with their testimony concerning him (R. 75). He admitted co-operating with the Communist Party from 1942 to 1947 to such a degree that some persons might honestly have thought him to be a Communist (R. 75). He made contributions to Communist causes (R. 75-77), signed petitions for Communists (R. 75-77), and attended caucuses at an FE convention at which Communist Party officials were present (R. 75). He also participated in union meetings along with such Communists as Fred Fine, Gil Green and Bill Sentner (R. 80-81) and attended a public meeting of the Communist Party where Foster spoke.[4] Petitioner was completely cognizant of the fact that the general program and policy of the Communist Party was to attempt to control the various unions (R. 81) and he testified that it was probably correct to say that the discussion he had with these men whom he knew to be Communists was in connection with their desire to control the union policy and activities (R. 81). However, he denied that he had ever been a "card-carrying member" of the

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[4] These men are known Communist leaders. All have been convicted for violation of the Smith Act, 54 Stat. 670, 671, 18 U.S.C. 2385. Gil Green was convicted along with Eugene Dennis and others in *Dennis* v. *United States*, 183 F. 2d 201 (C.A. 2), affirmed, 341 U.S. 494. Fred Fine was indicted along with the defendants in *United States* v. *Flynn*, 216 F. 2d 354 (C.A. 2), certiorari denied, 348 U.S. 909. At the time of the arrest he could not be located, but was subsequently tried and convicted on July 31, 1956 in the Southern District of New York. Sentner's appeal from his conviction is now pending (No. 15097, 8th Circuit).

Communist Party (R. 75). Contradicting Spencer's testimony, petitioner testified that he did not have anything to do with recruiting Spencer into the Party (R. 73-74) and that "Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings" (R. 75). Petitioner further denied recruiting Rumsey into the Party or receiving dues from him or paying dues to him under the alias of Sam Brown (R. 75, 77, 83-84).

The Committee then proceeded to ask petitioner whether he knew certain persons whom Rumsey during his testimony in Chicago had identified as fellow members in the Communist Party when he (Rumsey) also was a member (R. 84, 85, 87). The first of the persons whom petitioner knew was Harold Fisher (R. 85). The Committee then asked him whether he knew Fisher to be a member of the Communist Party (R. 85). Petitioner, after conferring with counsel, made the following statement (R. 85-86):

> I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and who I believe still are. I will not however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or

otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.

I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates.

On further questioning, petitioner reiterated his intention not to rely on the Fifth Amendment and assured the Committee that he was acting on the advice of counsel (R. 86).[5] He was then directed by the Chair-

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[5] After making his statement, the following colloquy occurred (R. 86):

Mr. Kunzig: And I want to get this clear for the record. You are not in any way raising the fifth amendment?

Mr. Watkins: I am not.

Mr. Kunzig: But you are refusing to answer the question I have just asked you?

Mr. Watkins: Based upon the statement just read, yes.

Mr. Kunzig: And you, of course, have advice of counsel. He is sitting right next to you at this moment and you just conferred with him, is that correct?

Mr. Watkins: That is correct.

Mr. Scherer: Mr. Chairman, I ask that you direct the witness to answer.

Mr. Velde: Yes. This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation.

The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Repre-

man to answer the question and refused to do so.

The next person identified by Mr. Rumsey, who petitioner admitted knowing, was Charles Hobbe (R. 87). When asked if he knew "Charles Hobbe to be a member of the Communist Party," petitioner's reply was "I stand on my statement" and he refused to answer further (R. 87). Thereupon, the Chairman directed him to answer, but, again referring to his statement, he refused to comply (R. 87).

Similar refusals and directions to answer followed, and like those previously described became the subject of the various counts of the indictment. In all, petitioner refused to answer as to thirty persons whom he admitted knowing (R. 87-90).[6]

In August, four months following the hearings, the Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. (Supp. II) 841 *et seq.*, was passed. The Act contained several amendments to the Internal Security Act of 1950 (64 Stat. 987, 50 U.S.C. 781 *et seq.*), in-

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sentatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel.

Now do you remember the question that was propounded to you?

Mr. Watkins: I remember the question, Mr. Chairman, and I have read my answer, which among other things, states that your committee may have this power, and I stand on my statement.

[6] As to one additional person, Joseph Stern, petitioner told the Committee, "I have knowledge that he carried on Communist Party activities in the Quad City area. I have not known him for several years, or his whereabouts, but at the time he was in the Quad Cities he was carrying on Communist Party activities" (R. 90).

cluding a provision (68 Stat. 775, 779-780, 50 U.S.C. (Supp. II) 792a(h)) denying to a labor union, found by the Subversive Activities Control Board to be a Communist-infiltrated organization, any benefits provided by the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U.S.C. 141 *et seq.*)[7]

ARGUMENT

This petition is wholly bottomed on the erroneous postulate that the Committee had no valid *legislative* purpose when it questioned petitioner. But the Court of Appeals has definitely found that there was a specific and valid legislative objective to the inquiry (Pet. 44-47, 50)—in particular, a study of Communist labor union activities in connection with bills on that subject—and the record supports that finding. There is no occasion, therefore, to reach the broad questions presented as to "exposure for exposure's sake" (Pet. 2-3, 19, *et seq.*) Nor, since the court "must judge each inquiry in its own setting and upon its own facts," as the Court of Appeals said (Pet. 50), is there any call for this Court to review the particular determination in this case by the lower courts that petitioner was interrogated pursuant to, and in connection with, a specific legislative inquiry. The general principles governing Congressional inquiries, as they actually affect this case, are not in dispute; the only real con-

[7] Among other changes, the Communist Control Act of 1954 added the term "Communist-infiltrated" organization and its definition to the Internal Security Act of 1950 (68 Stat. 775, 777, 50 U.S.C. (Supp. II) 782). Section 6 of the Communist Control Act also made it unlawful for members of Communist organizations to hold office or employment with any labor organization or to represent an employer (68 Stat. 775, 777, 50 U.S.C. (Supp. II) 784).

troversy is as to the existence of a valid "legislative purpose" in this particular instance and that relatively narrow issue has been decided adversely to petitioner.

I.

As the courts below have found, the Committee did have a valid, specific, legislative purpose in questioning petitioner.

1. It was pointed out by the Chairman of the Committee, at the commencement of the hearing of which petitioner's interrogation was a part, that forty-seven recommendations made by the committee had been acted upon by Congress at that time (*supra*, p. 7; R. 43). Among those was the Internal Security Act of 1950, which was enacted on the basis of a congressional finding that "[t]here exists a world Communist movement . . . whose purpose it is by . . . infiltration into other groups . . . and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world" and that this movement presented "a clear and present danger to the security of the United States" (64 Stat. 987-989 (50 U.S.C. 781). The Chairman also expressly stated that there had been referred to the Committee a bill which would deny to Communist-controlled unions the benefits of the Labor Management Relations Act of 1947 (*supra*, p. 7; R. 44). Some four months later the bill became law (*supra*, p. 12).

In *McGrain* v. *Daugherty*, 273 U.S. 135, 177-178, the Court held that, if the subject of the inquiry is one in which legislation by Congress "could be had", it is immaterial that the authorizing resolution fails to

include an express avowal that an investigation is being directed for a legislative purpose. And *Sinclair* v. *United States,* 279 U.S. 263, 294-295, declared that Congress could investigate to determine what, if any, legislation was necessary. *Quinn* v. *United States,* 349 U.S. 155, also recognizes the power of Congress to investigate matters relating to contemplated legislation—"including of course the authority to compel testimony, either through its own processes or through judicial trial" (349 U.S. at 160-161). Where, as here, the Committee has specific legislative proposals under consideration, there can be no doubt of its power to investigate to ascertain whether any legislation is necessary, and, if so, what form it should take. The inquiry undertaken in this case was as directly related to contemplated legislation as those in the *McGrain* and *Sinclair* cases, and the many other instances in our history in which the contempt statute has validly been applied to Congressional investigations.[7a]

2. The particular questions asked petitioner were pertinent to the particular matter under inquiry and were not for the purpose of exposure. He admitted cooperating with the Communist Party from 1942 to 1947, in union activities, to such an extent that some persons might honestly have believed him to be a Communist (*supra,* 9), and he was admittedly familiar with Communist infiltration, over a period of years, into at least one segment of union functioning (*supra,* pp. 8-11).

[7a] Petitioner did not make the claim below that the Committee's inquiry exceeded its mandate from the House, and he does not do so here (see Pet. 34).

(a). In these circumstances, it is clear that his knowledge was relevant to the inquiry into the scope and nature of Communist infiltration into union activities. The answers to the questions put by the Committee could well reveal, in themselves, the extent of Communist influence in the union, and, if petitioner had answered affirmatively, his replies would have provided the basis for further inquiry as to the detailed character of the infiltration. Such questioning was plainly material to consideration of a bill which became the Communist Control Act of 1954, with its special provisions relating to Communist-infiltrated unions (*supra,* pp. 12-13).

Moreover, petitioner had made a direct attack on the credibility of Donald O. Spencer and Walter Rumsey, two witnesses who had testified before the Committee (*supra,* 8-10). It was after petitioner had denied certain testimony given by Rumsey that the Committee began to question him concerning the Communist Party membership of about thirty persons whom Rumsey had identified as being Communists in the labor movement (*supra,* 10). Since he had already attacked Rumsey's credibility, petitioner could not refuse to answer these questions which likewise bore on Rumsey's veracity. As was pointed out by the Court of Appeals (Pet. 50-51), "Having volunteered an attack on the credibility of a prior witness, appellant could not later refuse to answer questions concerning Communist Party membership of other union associates of appellant and of the prior witness on the ground that this particular phase of testimony was beyond the scope of the Committee's in-

vestigating power." Cf *Rogers* v. *United States*, 340 U.S. 367.

(b). If the Committee had the additional (and more general) aim of ascertaining the number of Communists at a particular period in our recent history, that, too, would be a valid subject of inquiry in connection with such measures as the Communist Control Act of 1954 or amendments to the Internal Security Act of 1950. Congress, having the power to inquire into Communism and the Communist Party for the purpose of considering legislation, must also have the power to identify individuals who belong to the Party. *Barsky* v. *United States*, 167 F. 2d 241, 246, certiorari denied, 334 U.S. 843; *Morford* v. *United States*, 176 F. 2d 54, 57 (C.A.D.C.), reversed on other grounds, 339 U.S. 258; *United States* v. *Kamin*, 136 F. Supp. 791, 799-800, 801 (D. Mass).[8] The relative numerical strength of the Party at certain periods is material to the subject and can properly involve an inquiry into past as well as present membership. Thus, the Court of Appeals stated (Pet. 43):

> * * * A majority of the court is of opinion that congress has power to investigate the history of the Communist Party and to ask the questions Watkins refused to answer. It would be quite in order for Congress to authorize a committee

[8] See also *Marshall* v. *United States*, 176 F. 2d 473, 474-475 (C.A.D.C.), certiorari denied, 339 U.S. 933, where the court held that an inquiry into the finances and *personnel* of the National Federation for Constitutional Liberties was proper; and in *United States* v. *Norris*, 300 U.S. 564, this Court held that a resolution authorizing an inquiry into the names of persons and corporations subscribing to the campaign expenditures of various candidates was within the constitutional powers of Congress.

> to investigate the rate of growth or decline of the Communist Party, and so its numerical strength at various times, as part of an inquiry into the extent of the menace it poses and the legislative means that may be appropriate for dealing with that menace.[9]

2. Despite the specific finding by the Court of Appeals that the questions "*were*" actually pertinent, and not merely "*could*" have been relevant (Pet. 43), petitioner still insists that the questioning by the Committee was "a clear case of exposure for exposure's sake" (Pet. 19, *et seq.*). He urges in support that the Committee "from its earliest days down to the present, has asserted a separate and independent power of exposure unrelated to legislative purpose" (Pet. 19); as proof, offer was made of newspaper reports and statements made by Committee members at various times.

But the Court of Appeals properly ruled that "even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry" (Pet. 50). Each inquiry should be judged "in its own setting and upon its own facts" (Pet. 50); in this case the

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[9] In determining whether a question is pertinent to a subject under investigation, the courts have always allowed Congress a wide latitude. Thus, in *Townsend* v. *United States*, 95 F. 2d 352, 361 (C.A.D.C.), certiorari denied, 303 U.S. 664, citing *McGrain* v. *Daugherty*, 273 U.S. 135, it was stated that "[a] legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress." See also *United States* v. *Josephson*, 165 F. 2d 82, 89-90 (C.A.D.C.), certiorari denied, 333 U.S. 838; *Barsky* v. *United States*, 167 F. 2d 241, 243-247 (C.A.D.C.), certiorari denied, 334 U.S. 843; *United States* v. *Orman*, 207 F. 2d 148, 153-154 (C.A. 3).

opening statements made by the Chairman—as well as the posture of the particular legislation then pending in Congress, and the nature of the questions asked petitioner—plainly indicate that there was a specific legislative objective of this particular inquiry viewed "in its own setting and upon its own facts". In circumstances such as these, a court cannot go behind the stated purpose of the investigation to delve into some other, or ulterior, motive claimed to exist within the minds of the legislators. *Sinclair* v. *United States*, 279 U.S. 263, 295; *McGrain* v. *Daugherty*, 273 U.S. 135, 170, 172, 175-178; *Dennis* v. *United States*, 171 F. 2d 986, 988 (C.A.D.C.), affirmed on other grounds, 339 U.S. 162; *Barsky* v. *United States*, 167 F. 2d 241, 250 (C.A.D.C.), certiorari denied, 334 U.S. 843; *Eisler* v. *United States*, 170 F. 2d 273, 278-279 (C.A.D.C.), certiorari dismissed, 338 U.S. 883; *United States* v. *Orman*, 207 F. 2d 148, 157 (C.A. 3); *United States* v. *Kamin*, 136 F. Supp. 791, 800-801 (D. Mass.).[10]

There is likewise no merit to petitioner's related argument that the Committee already had in its files all the information it attempted to obtain from him (Pet. 26-29). First, this contention overlooks the fact that petitioner had attacked the credibility of the witness Rumsey and was being questioned further on that witness' testimony which certainly formed part of the information then in the Committee's files on the 30 persons petitioner was asked to identify (*supra*, 10). Second, it is settled, as petitioner admits (Pet.

[10] We do not mean here either to affirm or deny the existence of a general Congressional power of "exposure" unrelated to a particular legislative inquiry. Our position is simply that that question is not actually presented by this case, and is therefore not reached.

28), that Congress may conduct hearings to substantiate earlier testimony. *Young* v. *United States*, 212 F. 2d 236, 239 (C.A.D.C.), certiorari denied, 347 U.S. 1015.[15] In any case, Congress cannot be required "to exhaust the possibilities" (Pet. 28) in its files before questioning a witness, any more than a witness in a judicial proceeding, whose testimony is relevant and unprivileged, can refuse to testify on the ground that the court already has enough evidence or that other sources of information should be used. Such a requirement would amount to an undue infringement on the powers of the legislature to conduct its own inquiries. For the same reason, petitioner cannot complain of questions concerning labor unions which the Committee did not ask him (Pet. 25-26, 29 fn., 22; 31, 58). He had shown himself to be a recalcitrant witness, and the Committee could appropriately decline to question him further.

3. Since the questions were pertinent to an authorized inquiry, petitioner had no right to refuse to answer on the ground that "exposure" might result. In such a case, failure to reply can not be excused—in the absence, as here, of a claim of privilege under the Fifth Amendment—because the witness might be "exposed" for a wrong doing, disreputable activity, or a crime. 2 U.S.C. 193;[12] *Sinclair* v. *United States*, 279

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[11] In *Young* v. *United States*, *supra*, the court held that hearings were proper to substantiate an earlier report on a bill which appeared doubtful of passage in view of a presidential reorganization plan.

[12] "No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any joint committee established

U.S. 263, 295; *McGrain* v. *Daugherty*, 273 U.S. 135, 179-180; *United States* v. *Josephson*, 165 F. 2d. 82, 89 (C.A. 2), certiorari denied, 333 U.S. 838. Indeed, petitioner himself admits that the powers of Congress to investigate encompass exposure "where ancillary to a valid legislative purpose" (Pet. 13).

II.

In one of his "questions presented" (Pet. 3), petitioner challenges, on the ground of vagueness, the validity of the resolution authorizing the Committee to function,[13] but this point is barely mentioned in the rest of the petition (see Pet. 17, fn. 13). The resolution has already been upheld in the lower courts against comparable assaults. *Dennis* v. *United States*, 171 F. 2d 986, 987-988 (C.A.D.C.), affirmed on other grounds, 339 U.S. 162; *Barsky* v. *United States*, 167 F. 2d 241, 242-247 (C.A.D.C.), certiorari denied, 334 U.S. 843; *United States* v. *Josephson*, 165 F. 2d 82, 90-1 (C.A. 2), certiorari denied, 333 U.S. 838; *Emspak* v. *United States*, 203 F. 2d 54, 56 (C.A.D.C.), reversed on other

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by a joint or concurrent resolution of the two Houses of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous." (R. S. § 103.)

[13] H. Res. No. 5, 79th Cong., 1st Sess., 91 Cong. Rec. 10, 15 (1945). This resolution, which established the committee as one of the standing committees of the House, was carried into House Rules X and XI and into the Legislative Reorganization Act of 1946, 60 Stat. 812, 828. The Reorganization Act was adopted as the Rules of the 83rd Congress by H. Res. No. 5, 83rd Cong., 1st Sess. (1953), *supra*. Prior to January 3, 1945, the Committee was a special committee, popularly known as the Dies Committee.

grounds, 349 U.S. 190.[14] In *Emspak* and its companion cases, the issue was argued here but was not reached by the Court (see 349 U.S. at 170, 202, 223). As applied to petitioner, we submit that the resolution is clearly valid for the reasons set forth in the Briefs for the United States in *Emspak*, Oct. Term, 1953, No. 67, pp. 48-50, 66, *se seq.*, and in *Quinn* v. *United States*, Oct. Term, 1954, No. 8, pp. 70-79.

Petitioner has also summarily presented (Pet. 3), with hardly any discussion, the question of whether the First Amendment protects against the "forced disclosure" of his "past political associations". But this point does not exist in petitioner's case since he freely testified as to his own past history and general associations (cf. *Rogers* v. *United States*, 340 U.S. 367), and in any event the specific inquiries to which he refused to respond concerned Communist infiltration into union activities, not purely "political" activities. Moreover, the First Amendment does not bar inquiry into Communist activities in the circumstances about which petitioner was asked. See the Briefs for the United States in *Emspak, supra*, pp. 95 *et seq.*, and in *Quinn, supra*, pp. 70 *et seq.*

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[14] Other cases are:—*Eisler* v. *United States*, 170 F. 2d 273 (C.A.D.C.), certiorari dismissed, 338 U.S. 883; *Marshall* v. *United States*, 176 F. 2d 473 (C.A.D.C.), certiorari denied, 339 U.S. 933; *Lawson* v. *United States*, 176 F. 2d 49, 50-53 (C.A.D.C.), certiorari denied, 339 U.S. 934; *Kamp* v. *United States*, 176 F. 2d 618 (C.A.D.C.), certiorari denied, 339 U.S. 957; *Morford* v. *United States*, 176 F. 2d 54 (C.A.D.C.), reversed on other grounds, 339 U.S. 258.

III.

Petitioner also contends (Pet. 34-38) that the trial court erred in denying (R. 10-11), without opinion, his motion (R. 4-10) to dismiss the indictment on the ground that "there were less than 12 members of the Grand Jury who concurred in finding the indictment who were free from prejudice or bias against [him]" (R. 4), or, in the alternative, to grant a hearing at which he might "determine which grand jurors concurred in finding the indictment and offer proof * * * that bias or prejudice existed on the part of the requisite number of the grand jurors" (*ibid.*). The basis of the asserted bias and prejudice was the alleged fact, stated on information and belief, that eleven of the grand jurors were government employees and that, of the remainder, some were "close associates" or "relatives" of govenment employees (R. 5). It was alleged that all such persons, by reason of the Government's loyalty-security program, are so affected by a "climate of * * * intimidation" concerning all aspects of Communism as to render them unable, freely and without intimidation, to vote against the indictment of persons accused of crimes which are in any way connected with that subject (R. 6-10).

This contention, which, though urged in the Court of Appeals, is not discussed in either of the opinions, is substantially identical with one of the contentions made in the petition for certiorari in No. 137, this Term, *Ben Gold* v. *United States*. Our reply in that case (Br. in Opp., pp. 38-40) is accordingly adopted

for this case.[15] See, also, the Brief for the United States in *Quinn* v. *United States*, Oct. Term, 1954, No. 8, pp. 43 *et seq.*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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AUGUST, 1956

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[15] To the extent that the instant case differs from *Gold* on its facts, the difference does not favor petitioner. For here, as in *Emspak* v. *United States*, 203 F. 2d 54, 58-60 (C.A.D.C. [concurring opinion]), reversed on other grounds, 349 U.S. 190, the trial court was aware that the fact of petitioner's refusal to answer the Committee's questions was not in dispute. The defense was rather "a legal justification for the refusal" (*id.* at 59). Since "[t]he function of the grand jury is merely to determine whether the evidence before it, if unexplained, would justify a verdict of guilty" (*id.* at 60),—since, that is to say, "[o]ur legal procedure does not include provision for the presentation to a grand jury of matters of defense or justification" (*id.* at 59)—it is as true here as it was in *Emspak* that "[n]o circumstance was brought to the court's attention which demonstrated that this grand jury was unsuitable to take that action" (*id.* at 60).

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 175–185) and dissenting (R. 185–198) opinions in the Court of Appeals, sitting *en banc*, are reported at 233 F. 2d 681.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on April 23, 1956 (R. 199) and a petition for rehearing was denied on May 22, 1956 (R. 200). By order

[1] The appeal was first heard by a three-judge division of the court, composed of Chief Judge Edgerton and Judges Bazelon and Bastian. This division reversed petitioner's conviction, with Judge Bastian dissenting. The dissenting opinion of the two judges who constituted the majority of the division, which they filed in connection with the *en banc* court's decision, is "nearly identical with" their former majority opinion (R. 185).

of Mr. Chief Justice Warren, the time for filing a petition for a writ of certiorari was extended to July 20, 1956 (R. 200) and the petition was filed on July 19, 1956. Certiorari was granted on October 8, 1956 (R. 201). 352 U. S. 822. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether it sufficiently appears from the record of the proceedings at which petitioner refused to answer questions that the House Committee on Un-American Activities was acting pursuant to a valid legislative purpose when it questioned petitioner.

2. Whether extraneous "evidence"—*i. e.*, materials other than the rule from which a congressional committee derives its authority and the record of the proceedings at which a refusal to answer questions occurred—is admissible at the trial of the recalcitrant witness to prove that the committee had other than a valid legislative purpose.

3. Whether the Committee's inquiry would not have been valid even if its purpose had been simply to inform Congress and the public of Communist activities in labor unions.

4. Whether a witness before a congressional committee has the right under the First Amendment to refuse to disclose whether various individuals among his past associates, who to his "best knowledge and belief" have "removed themselves from the Communist movement", were to his knowledge once members of the Communist Party, where the witness fully

discloses his own past Communist affiliations and is willing to, and does, name those of his past associates who were formerly, and to his "best knowledge and belief" still are, active in the Party.

5. Whether 2 U. S. C. 192 (providing for the punishment of any witness before a congressional committee who refuses to answer any question "pertinent to the question under inquiry"), read together with the House rule establishing the Committee on Un-American Activities, is unconstitutionally vague.

6. Whether, in the pretrial proceeding in which he sought the dismissal of the indictment, petitioner was entitled to a hearing to prove that government employees, of whom there were some on the indicting grand jury, are biased as a class in cases involving Communism, or, in the alternative, to an opportunity to examine such employees for the purpose of determining whether they or any of them were individually biased against him.

STATUTE AND RULES INVOLVED

2 U. S. C. 192 (R. S. 102, as amended) provides:

> Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a mis-

demeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Rules X and XI of the Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828 (which Rules were adopted by the House at the commencement of the Eighty-Third Congress[2] as rules of the House for that Congress (H. Res. 5, 83d Cong., 1st sess., 99 Cong. Rec. 15, 16, 18, 24)), provide in pertinent part as follows:

RULE X.—STANDING COMMITTEES

(a) There shall be elected by the House, at the commencement of each Congress, the following standing committees:

* * * * *

17. Committee on Un-American Activities, to consist of nine Members.

* * * * *

RULE XI.—POWERS AND DUTIES OF COMMITTEES

(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively: * * *

* * * * *

(q) (1) *Committee on Un-American Activities.*

[2] It was during that Congress that the refusals to answer questions here involved occurred (April 29, 1954).

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman,

and may be served by any person designated by any such chairman or member.

* * * * *

STATEMENT

On April 29, 1954, petitioner, appearing as a witness before a subcommittee of the Committee on Un-American Activities of the House of Representatives, refused to answer certain questions put to him as such witness (R. 69 *et seq.*). On May 11, 1954, Representative Velde, Chairman of the Committee, submitted a report of petitioner's refusal to the House of Representatives (H. Rep. No. 1579, 83d Cong., 2d sess.; Gov. Ex. 3, R. 65–67). The House directed the Speaker to certify to the United States Attorney for the District of Columbia, for presentment to the grand jury, the committee's report (H. Res. No. 534, 83d Cong., 2d sess.; Gov. Ex. 4, R. 68). A seven-count indictment, charging petitioner with violating 2 U. S. C. 192 (*supra,* pp. 3–4), was thereafter returned in the United States District Court for the District of Columbia (R. 2–3).

Petitioner waived his right to a trial by jury (R. 16) and was found guilty on all counts (R. 17–18). He was fined five hundred dollars and sentenced to imprisonment for one year (R. 18). Execution of the prison sentence was suspended and petitioner was placed on probation (R. 18). On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was affirmed *en banc* (per Bastian, J.), Chief Judge Edgerton and Judge Bazelon dissenting (R. 175–198).

The pertinent facts may be summarized as follows:

Rule X of the Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, provides for a Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress (*supra,* p. 4). Under Rule XI, all proposed legislation relating to un-American activities is to be referred to this committee, which is authorized to investigate "the extent, character, and objects of un-American propaganda activities in the United States", "the diffusion within the United States of subversive and un-American propaganda", and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation" (*supra,* pp. 4–5). These Rules were adopted as part of the rules of the House at the beginning of the Eighty-third Congress (during which the offenses here involved occurred) by H. Res. 5, 83d Cong., 1st sess. (99 Cong. Rec. 15, 16, 18, 24).[3]

In large part as a result of investigations and recommendations by the House Committee on Un-American Activities, the Internal Security Act of 1950 (64 Stat. 987) was enacted (R. 28, 43). At the time of petitioner's appearance before the Committee, the Committee was considering a proposed amendment to this Act (R. 28, 44), which would deny the "use

[3] The Committee was made one of the standing committees of the House of Representatives in January 1945 by H. Res. 5, 79th Cong., 1st sess. (91 Cong. Rec. 10, 15). Prior to that time, it was a special committee popularly known as the Dies Committee, first established in 1938.

of the National Labor Relations Board" to any labor organization which the Subversive Activities Control Board should find, after hearing, to be a "Communist-controlled action group" (R. 44).[4] The Committee was also making a study of a proposed "immunity statute" and of a bill dealing with the admissibility of evidence secured from "confidential devices" in "cases involving the national security" (R. 30, 44). In connection with this and other proposed legislation, the Committee conducted hearings in various areas to investigate the extent of Communist infiltration into labor unions (R. 26–27, 43, 44).

In March 1954, the Committee conducted public hearings in Chicago (R. 30). At the commencement of the hearings, Chairman Velde explained that a purpose of the Committee was to ascertain, as directed by Congress, the extent and success of subversive activities within the United States and on the basis of its investigations to make recommendations for new legislation (R. 27–28, 43). He pointed out that, during the fifteen years in which the Committee had been in existence it had made forty-seven recommendations to Congress, only eight of which had not been acted upon (R. 43).[5] He also referred to the pro-

[4] The substance of the proposed amendment was in fact enacted into law, as part of the Communist Control Act of 1954; four months following petitioner's appearance before the Committee. See *infra*, p. 15.

[5] Among the eight not acted upon was that providing that "witnesses appearing before congressional committee[s] be granted immunity from prosecution on the information they furnish" (R. 43). Subsequently, Congress passed the Immunity Act of 1954, 68 Stat. 745, amending 18 U. S. C. 3486. See *Ullmann* v. *United States*, 350 U. S. 422.

posed amendment to the Internal Security Act of 1950, referred to above, and other proposed legislation pending before the Committee (R. 44). Concluding his public statement, Mr. Velde stated that "Every witness who has been subpoenaed to appear before the committee here in Chicago, as in all hearings conducted by this committee, are known to possess information which will assist the committee in performing its directed function to the Congress of the United States" (R. 44).

During the Chicago hearings, one witness, Walter Rumsey, testified that he had been recruited into the Communist Party by petitioner (R. 33, 77) and at the beginning had paid dues to him (R. 33–34, 83–84). Rumsey further stated that he had later collected dues from petitioner, who had assumed the name of "Sam Brown" (R. 34, 84). The Committee also had testimony identifying petitioner as a Communist from one Donald O. Spencer, who had appeared before the Committee some eighteen months previously, on September 3, 1952 (R. 31, 73). Spencer had admitted being a Communist from 1943 to 1946 (R. 32, 73), and had testified that he had been recruited into the Party by Rumsey with the endorsement and prior approval of petitioner, whom he identified as the then "district vice-president" of the Farm Equipment-CIO International Union (FE) (R. 32, 73). Spencer had further testified that he had once attended a Communist Party meeting at which petitioner and two others, Kate Hall and Jerry Fielde, were present (R. 74).

In Chicago, the Committee attempted to subpoena petitioner, but he could not be found (R. 26, 70), The hearings were later continued in Washington, D. C. (R. 26, 70). Petitioner was summoned and appeared with counsel before the Committee on April 29, 1954 (R. 70). Petitioner testified that from 1935 to 1953 he had been employed by the International Harvester Company at East Moline, Illinois (R. 72). From 1942 to 1953, he said, he had been on leave from the latter job pursuant to the terms of a labor union contract (R. 72). He had been employed by the Farm Equipment-CIO International Union (FE) from 1942 to 1949 (R. 72), during which time he had risen to the position of president of the FE-CIO District No. 2, made up of a certain geographical area around the "Quad Cities", including Canton and Rock Falls, Illinois, and Dubuque, Iowa (R. 77). When the Farm Equipment Workers merged with the United Electrical, Radio and Machine Workers (UE) in 1949, he further testified, he continued with the latter union until 1953, when he left to go with the United Auto Workers-CIO International Union as an organizer (R. 72).

When questioned about the testimony of Spencer and Rumsey, petitioner admitted knowing them (R. 73, 77, 78, 79) and indicated that he was familiar with their testimony concerning him (R. 75). He admitted having "cooperated with the Communist Party" and having "participated in Communist activities" during the years 1942 to 1947 "to such a degree that some persons may honestly believe" him to have been a

Party member (R. 75). He admitted that he had made contributions to Communist causes (R. 75–77), signed petitions for Communists (R. 75–77), and attended caucuses at an FE convention at which Communist Party officials were present (R. 75). He also had participated in union meetings, he said, along with such Communists as Fred Fine, Gil Green and Bill Sentner[6] (R. 80–81), and had attended a public meeting of the Communist Party at which Party-head William Z. Foster had spoken (R. 82).

Petitioner was completely cognizant of the fact that the general program and policy of the Communist Party was to attempt to control the various unions (R. 81) and he testified that it was "probably correct" to say that the discussions he had had with individuals known by him to be Communists had been "in connection with their desire to control * * * the union's policy and activities" (R. 81). However, he denied that he had ever been a "card-carrying member" of the Communist Party (R. 75). Contradicting Spencer's testimony, he testified that he had had nothing to do with recruiting Spencer into the Party (R.

[6] These individuals are all well-known Communist Party leaders. All have been convicted for violation of the Smith Act. Green was one of the defendants in the prosecution which culminated in *Dennis* v. *United States*, 341 U. S. 494. Fine was one of those indicted in the New York "second-string" prosecution, which culminated in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909. He could not be located at first, but he was subsequently tried and convicted, on July 31, 1956, in the Southern District of New York. Sentner's appeal from his conviction is now pending (No. 15097, 8th Circuit).

73–74) and that "Spencer was wrong when he termed any meetings which I attended as closed Communist Party meetings" (R. 75). In contradiction of Rumsey, petitioner denied having recruited Rumsey into the Party, or having received dues from him, or having paid dues to him under the alias "Sam Brown" (R. 75, 77, 83–84).

The Committee then proceeded to ask petitioner whether he knew certain persons whom Rumsey, during his testimony in Chicago, had identified as fellow members active in the Communist Party when he (Rumsey) also was a member (R. 40, 84, 85, 87). The first of the persons whom petitioner said he knew was one Harold Fisher (R. 85). The Committee asked him whether he knew Fisher to be a member of the Communist Party (R. 85). Petitioner, after conferring with counsel, read the following prepared statement (R. 85–86):

> I would like to get one thing perfectly clear, Mr. Chairman. I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members

> or otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement.
>
> I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates.

On further questioning, petitioner reiterated his intention not to rely on the Fifth Amendment (R. 86). The First Amendment was mentioned by no one at any time during the colloquy. Upon Representative Scherer's requesting Chairman Velde to "direct the witness to answer" (R. 86), Mr. Velde said (*ibid.*):

> Yes. This committee is set up by the House of Representatives to investigate subversion and subversive propaganda and to report to the House of Representatives for the purpose of remedial legislation.
>
> The House of Representatives has by a very clear majority, a very large majority, directed us to engage in that type of work, and so we do, as a committee of the House of Representatives, have the authority, the jurisdiction, to ask you concerning your activities in the Communist Party, concerning your knowledge of any other persons who are members of the Communist Party or who have been members

> of the Communist Party, and so, Mr. Watkins, you are directed to answer the question propounded to you by counsel.
>
> Now do you remember the question that was propounded to you?

Petitioner replied that he "remembered the question" but would "stand on [his] statement" (R. 86).

The next person who had been identified as a Communist by Mr. Rumsey and whom petitioner admitted knowing was a Charles Hobbe (R. 87). When asked if he knew Hobbe to be "a member of the Communist Party," petitioner again refused to answer, again declaring that he would "stand on [his] statement" (R. 87). Similar refusals to answer with respect to other individuals followed, each accompanied by a direction to answer, and, like those previously described, became the subjects of the various counts of the indictment. In all, petitioner refused to answer as to thirty persons whom he admitted knowing (R. 87–90). However, consistently with his position that he would answer questions about persons whom he knew to be Communists and who he believed were still such as of the time of his testifying (R. 85, 88), he made the following statement concerning an individual identified as Joseph Stern, who was one of the persons about whom the Committee inquired (R. 90):

> I have knowledge that he carried on Communist Party activities in the Quad City area. I have not known him for several years, or his whereabouts, but at the time he was in the Quad Cities he was carrying on Communist Party activities.

In August, four months following the hearings, the Communist Control Act of 1954, 68 Stat. 775, 50 U. S. C. (Supp. II) 841 *et seq.*, was passed (R. 28–29). The Act contained several amendments to the Internal Security Act of 1950 (64 Stat. 987, 50 U. S. C. 781 *et seq.*), including a provision (§ 10, 68 Stat. 775, 779–780) amending the Internal Security Act (see 50 U. S. C. (Supp. II) 792a (h)) so as to deny to labor unions found by the Subversive Activities Control Board to be "Communist-infiltrated" organizations any of the benefits provided by the National Labor Relations Act.[7]

SUMMARY OF ARGUMENT

I

The Committee was acting pursuant to a valid legislative purpose when it questioned petitioner.

A. The purpose of a congressional inquiry must be gathered from the record of the committee hearing and the committee's authorization, hospitably

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[7] Among other changes in the Internal Security Act which the Communist Control Act effected are the following:

Section 7 of the Communist Control Act (68 Stat. 777) added the term "Communist-infiltrated organization" and its definition to the Internal Security Act and broadened the latter Act's definition of "Communist organization" so as to include "Communist-infiltrated organizations" (see 50 U. S. C. (Supp. II) 782). Section 6 of the Communist Control Act (68 Stat. 777) further amended the Internal Security Act so as to make it unlawful for any member of a "Communist organization" (the definition of which had thus been expanded) to "hold office or employment with any labor organization * * * or to represent any employer in any matter or proceeding arising or pending under [the National Labor Relations] Act" (see 50 U. S. C. (Supp. II) 784 (a) (1) (E)).

read. In interpreting a committee's authority, the courts have been mindful that an inquiry need not be restricted to those facts which prove the need for new legislation. Nor need it be limited to the precise area which Congress has power to regulate. The power to investigate is broader than the substantive authority which may eventually be exerted by the investigating body, for not until the whole region of facts has been canvassed can it be determined where the boundaries of regulation should be drawn. Judicial inquiry into a committee's "legislative purpose" must therefore not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly.

B. The record of this hearing, together with the rule under which the Committee operates, show that the hearing had a proper legislative purpose.

1. At the very commencement of the series of hearings of which petitioner's interrogation was a part, the aim of the hearings was stated by the Chairman to be "to ascertain," pursuant to the mandate of Congress, "the extent and success of subversive activities directed against these United States," and, on the basis of its findings, to make to the Congress "recommendations * * * for new legislation." The Chairman further pointed out that some forty-seven recommendations, previously made by the Committee, had been acted upon by Congress up to that time, the resulting legislation including the Internal Security Act of 1950, which had been enacted as the result of a congressional finding of the existence of a "world

Communist movement," whose purpose it is, by "infiltration into other groups" (among other ways), to establish a world-wide "Communist totalitarian dictatorship." The Chairman also stated that there had been referred to the Committee an important proposed amendment to this Act (which in fact became law four months following petitioner's appearance before the Committee), which would deny to Communist-controlled labor unions the benefits of the National Labor Relations Act. Previously, Congress had enacted the non-Communist affidavit provisions of the Taft-Hartley Act in an effort to diminish Communist influence in trade unions. It is thus clear that the Committee was investigating a subject with respect to which Congress had already passed legislation, and with which it would shortly concern itself once again.

2. The particular information which the Committee sought to elicit from petitioner was clearly pertinent to its inquiry into the need for further legislation respecting Communist infiltration into labor unions. The language of Rule XI (containing the Committee's grant of authority from the House of Representatives) was certainly broad enough to warrant inquiry into the success of past Communist infiltrations into unions, with a view to evaluating the impact of existing statutes and the need for new ones. If the extent of the success of subversive propaganda is to be determined, inquiry into the numbers and identities of persons who are or have been influenced by it (as well as the importance of their positions in strategic areas of the economy) is not improper. "Per-

sonnel is part of the subject." *Barsky* v. *United States*, 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843. Petitioner, as he himself acknowledged, had information on that aspect of the subject.

3. The fact that the Committee did not ask petitioner about all his personal experiences connected with the infiltration of Communists into the unions with which he had been associated did not, contrary to his contention, evidence an "unmistakable purpose of exposure" for "exposure's sake." Petitioner, an active leader in the labor movement for many years, had been identified by two previous witnesses as a member of the Communist Party. These witnesses had likewise named as Communists other persons active in the labor field who the Committee had reason to believe were known to petitioner. It was natural, therefore, for the Committee to call petitioner for the purpose of corroborating or denying these other witnesses' testimony both as to himself and the others named. The very fact that petitioner corroborated in part and contradicted in part the earlier witnesses' testimony with respect to himself shows the reasonableness of the Committee's desire to question him for such additional light on the whole subject as he could throw. It can be presumed that the Committee already had information with respect to the general nature of Communist infiltrative techniques *vis-à-vis* labor unions. Its primary interest at the time was the *extent* of the Party's penetration into these unions. Inquiry as to whether named individuals connected with the unions were or were not Party members

was a logical and legitimate way of learning the answer. Decision as to the best way of obtaining the information sought must be left to the discretion of the Committee.

4. The possibility that some individuals may suffer hardship as a result of the exercise by Congress of its power of investigation—for example, by having various aspects of their past lives "exposed"—does not warrant a refusal to respond to a proper inquiry. No more than a witness at a trial was petitioner free to refuse to respond to otherwise legitimate questions on the ground that they invaded his or others' "privacy", or might "expose" them, or bring unfavorable publicity or public disapproval.

C. The extraneous "evidence" which petitioner offered to prove that the Committee's objective was "exposure" was properly excluded as inadmissible.

1. The evidence allegedly showing that the Committee had asserted in the past a separate and independent power of exposure—consisting of past reports of, and transcripts of earlier hearings before, the Committee, and excerpts from various statements of past and present members of the Committee, made on and off the floor of Congress—was inadmissible.

(*a*) A long line of decisions of this Court indicate that (a) the objective of a congressional inquiry should be gathered by the court solely from the record of the hearing and the text of the instrument authorizing the investigation, (b) extraneous materials alleged to traverse or challenge the purpose so determined should not be considered, and (c) the purpose of the inquiry should be hospitably sought

and held to be legitimate "if it is capable of being so construed" (*People, ex rel. McDonald* v. *Keeler,* 99 N. Y. 463, 487, quoted with approval in *McGrain* v. *Daugherty,* 273 U. S. 135, 178); "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be *obvious*" that such has been the case (*Tenney* v. *Brandhove,* 341 U. S. 367, 378) (emphasis added.) These rules spring from the respect owed by one coordinate branch of the Government to another, acting within its special sphere.

(*b*) These conclusions are borne out by an analysis of the nature and implications of the rule for which petitioner argues. That rule would apply, of course, not just to the Committee here involved, but to any committee of either House—indeed to the Houses themselves and to the Congress as a whole. It would give to every recalcitrant witness before every congressional committee the right to attempt to show—by evidence *dehors* the text of the instrument containing the committee's authorization, and outside of the record of the particular proceedings of the committee in which the recalcitrance occurred—that the committee, despite the fact that those two sources showed that it was acting pursuant to a valid legislative purpose, did not *in fact* have such a purpose. Under the rule proposed, an issue at every trial of such a recalcitrant witness would be the purpose of the committee—which would entail an inquiry into the thoughts and mental processes of the committee members. Grave problems would certainly arise as to which members' purposes, if it appeared that the members had different purposes, would be

authoritative. Every trial under 2 U. S. C. 192 would run the risk of being converted from a trial of the accused recalcitrant into a trial of the purposes and motives of the committee's members. The rule which we urge, on the other hand, comports with the realities of the efficient administration of justice and gives due recognition to the deference owed by the courts to a co-ordinate branch of the Government, yet fully respects the principle that the power of Congress to investigate, broad as it is, "cannot be used to inquire into private affairs unrelated to a valid legislative purpose" (*Quinn* v. *United States*, 349 U. S. 155, 161).

2. The evidence allegedly showing that the Committee already had the information it was seeking from petitioner in its files was also properly held inadmissible. It is an untenable premise that a congressional committee, once it has received testimony on some subject or subjects within its jurisdiction, may never question another witness on the same subject or subjects for corroborative or amplificatory purposes.

II

The Committee's inquiry would not have been invalid even if its purpose had been simply to inform Congress and the public of Communist activities in labor unions. There is considerable support among students of congressional power for the view that the "informing function" is one of the inherent powers of the legislatures of representative governments. Cf. *United States* v. *Harriss*, 347 U. S. 612, sustaining the Federal Regulation of Lobbying Act.

III

The Committee did not violate petitioner's rights under the First Amendment by requiring him to state whether to his knowledge various of his past associates were members of the Communist Party.

A. Petitioner fully and candidly disclosed his own past associations with the Communist Party. He was also willing to identify those of his past Communist associates who to his "best knowledge and belief" were still Party members, and he did in fact identify one of his former associates about whom he was questioned. It was only with respect to those of his past associates who to his "best knowledge and belief" had since "removed themselves from the Communist movement" that he refused to testify. Thus, what petitioner was actually seeking to do was to protect his former associates (in this latter category) from possible embarrassment. He was seeking to vindicate, if anyone's, not his, but their rights to political privacy under the First Amendment (assuming *arguendo* that the Amendment confers such rights, and treating the Communist Party for present purposes as merely another political party). But it is settled that one cannot invoke the constitutional rights of another.

B. In any event, a witness before a congressional committee inquiring into the nature and extent of Communist infiltration has no right under the First Amendment to decline to disclose whether he is or has been a member of the Communist Party.

1. Since Congress certainly has the power to inquire into, and legislate with respect to, the subjects

of Communism and the Communist Party (as many decisions have held), it has the power to identify the individuals who belong or have belonged to the Party. It has been uniformly so held. *E. g., Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843. For, the nature and scope of the program and activities of the Party depend in large measure upon the character and number of its adherents. In particular, Congress has the right to inquire into possible membership in the Communist Party of leaders of labor unions and those active in union undertakings. It has been clear at least since *American Communications Assn.* v. *Douds,* 339 U. S. 382, that in this field the Communist Party cannot be treated as an ordinary political party, nor associations with it as ordinary associations.

2. Petitioner's attempts to distinguish these decisions and their rationale are unavailing. That the Committee's questions related to past Party membership is not material. Congress is not precluded from inquiring into past Communist infiltrations by the fact that the persons responsible therefor may since have quit the Party. Nor is it material that the persons about whom petitioner was questioned might already have been identified at Committee hearings as Party members. The Committee had a right to seek for corroboration of information already in its possession.

3. Inherent in petitioner's argument is the contention that the "right to silence" is protected by the First Amendment. But even if it is accepted that

disclosures before the Committee may result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to their associations, it does not follow that the First Amendment is in any way violated. The sanction growing out of such disclosures is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee.

IV

2 U. S. C. 192, providing for the punishment of refusal by a witness before a congressional committee to answer any question "pertinent to the question under inquiry," is not unconstitutionally vague because the grant of authority to the Committee is broadly worded in terms of "un-American propaganda activities" and "other questions in relation thereto that would aid Congress in any necessary remedial legislation." This argument has been repeatedly and correctly rejected by the courts.

In the first place, the only constitutional questions before the Court are those which relate to the particular questions asked of petitioner. Secondly, the strict standards of definiteness applicable to criminal statutes have never been thought applicable to rules or resolutions establishing congressional committees and defining their powers; if this contention of petitioner's were sound, no congressional committee would have a sufficiently specific grant of authority to sustain the conviction of any witness who refused to give testimony before it. Thirdly, no problem of definite-

ness is presented so long as the subject of the specific inquiry at which the witness is questioned is clear, as it was here. Finally, the challenged terms of Rule XI, as they apply to this case, are, in any event, sufficiently precise in their context to satisfy any reasonable standard of definiteness.

V

Petitioner was not entitled to dismissal of the indictment because of the presence of government employees on the grand jury, nor did his allegations and offer of proof entitle him to a hearing on that issue. Substantially the same issue is involved in No. 137, this Term, *Ben Gold* v. *United States,* pending on writ of certiorari. For a summary of our arguments on the point, the Court is referred to pp. 49–51 of the Summary of Argument in the Government's brief in that case. Those arguments, moreover, have *a fortiori* applicability in this case. For, concededly, petitioner did in fact refuse to answer questions of the Committee as charged in the indictment. His defense was a legal justification for his refusals, and our legal procedure does not include provision for the presentation to a grand jury of matters of defense or justification.

ARGUMENT

Petitioner has presented as two of the issues in his case the questions of whether the House Un-American Activities Committee has the power, either (a) under the Constitution (Br. 2, 24–39), or (b) under the rule of the House whence it derives its powers

(Rule XI, *supra*, pp. 4–6) (Br. 76–95), to "expose" persons as past or present members of the Communist Party, separate from and independent of its conceded power to investigate "in aid of legislation."[1] As we show below, however (*infra*, pp. 27–53), the Committee had a valid and legitimate legislative objective when it questioned petitioner, and any "exposure" which might have resulted from the questioning was merely incidental to this purpose. Since petitioner concedes that a congressional committee may compel testimony which, in fact, "exposes" individuals as Communists, so long as such testimony is relevant to an investigation "in aid of legislation" (Br. 24–25), it follows that this record does not present the broad question which petitioner argues at length, of whether the Committee in question or, indeed, the Congress itself, has the power to "expose" individuals as past or present members of the Communist Party.

For that reason, we shall first discuss those issues which we believe are presented by this case, and only then do we propose to touch upon the broader questions which petitioner argues so comprehensively and at the same time so abstractly.

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[1] The latter of the two questions was concededly not squarely presented or argued in the petition for a writ of certiorari (Br. 78–79, fn. 61). See Rule 40 (1) (d) (2) of the Rules of this Court. In any event, for the reasons set forth in the text, it is our contention that neither of the two questions is presented by the facts of this case.

I

THE COMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE WHEN IT QUESTIONED PETITIONER

As we have just noted, petitioner strongly contends that the Committee's sole purpose was to "expose" him and his former associates to scorn and ridicule by publicizing their previous Communist affiliations (Br. 39). To support this position he argues, first, that, apart from its legislative function, the Committee, as evidenced by various committee reports, transcripts of committee hearings, and statements made by committee members on the floor of Congress and to the press, had asserted in the past a separate and "independent power of exposure" (Br. 39, 41–58). Secondly, he says, at the time the Committee questioned him it already had in its files the information which it sought to elicit from him, so that its purpose must have been solely that of exposure (Br. 39, 64–69). Thirdly, petitioner contends that the questions which the Committee did and did not ask him, as well as its colloquies with him, evidenced an "unmistakable" purpose of "exposure for exposure's sake" (Br. 24, 39, 58–64). The entire contention is without merit. The trial court and the Court of Appeals both correctly concluded, on the basis of the properly admissible evidence, that the Committee was

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acting pursuant to a valid legislative purpose when it questioned petitioner.[9]

A. THE PURPOSE OF A CONGRESSIONAL INQUIRY MUST BE GATHERED FROM THE RECORD OF THE COMMITTEE HEARING AND THE COMMITTEE'S AUTHORIZATION, HOSPITABLY READ

The decisions of this Court make clear that the purpose of a congressional investigation is ordinarily to be determined first of all, from the statute, rule, or resolution which authorized it. See, for example, *McGrain* v. *Daugherty,* 273 U. S. 135, 176–180; *Sinclair* v. *United States,* 279 U. S. 263, 294–295; *In re Chapman,* 166 U. S. 661, 669–671; *Kilbourn* v. *Thompson,* 103 U. S. 168, 192–196; *Barry* v. *United States ex rel. Cunningham,* 279 U. S. 597, 612, 619; *United States* v. *Rumely,* 345 U. S. 41.[10] In interpreting the authorizing document, the Court has adhered to its language (*Barry* v. *United States ex rel. Cunningham, supra,* at 611–613), but has not considered itself bound by strict rules of construction. Thus, the authorizing resolution need not include an express avowal that an

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[9] Petitioner contends that all that the Court of Appeals found was that the questions which he was asked *could* have been asked for a valid legislative purpose, not that they *did* have such a purpose (Br. 70–72). The court, however, explicitly stated that "A majority of the court is of opinion that the questions [asked petitioner] *were* pertinent to a valid legislative purpose * * *" (R. 178–179, emphasis added).

[10] In the *Kilbourn* case (see 103 U. S. at 196), the Court found that the resolution was in excess of the powers conferred on Congress by the Constitution. In *Rumely*, the Court concluded that the committee had exceeded the scope of the authority granted it under the resolution. In each of the other cases cited, the Court sustained the authority of Congress and the investigating committee.

investigation was being conducted for legislative purposes. *McGrain* v. *Dougherty, supra,* at 178; *In re Chapman, supra,* at 669–670. The prime test has been whether the subject to be investigated is one with respect to which Congress *might*, if necessary, legislate, and with which the particular committee is empowered to deal. *McGrain* v. *Daugherty, supra,* at 177–178; *Sinclair* v. *United States, supra,* at 295; *Kilbourn* v. *Thompson, supra,* at 195; see also *Barsky* v. *United States,* 167 F. 2d 241, 245 (C. A. D. C.), certiorari denied, 334 U. S. 843.

And in interpreting a committee's authority and objective, the courts have been mindful that an inquiry need not be restricted to those facts which prove the need for new legislation or for modification of existing laws; nor is it limited to the precise area which Congress has power to regulate or prohibit. The power to investigate is almost always broader than the substantive authority which may eventually be exerted by the investigating agency, for not until the whole region of facts has been canvassed can it be determined where the definite boundaries of regulation should be drawn. It is just as important for Congress to be informed of facts which show proposed or possible legislation to be undesirable or unnecessary as it is for it to know the circumstances calling for affirmative action. In many areas, such as those impinging on freedom of speech or interstate commerce, Congress's power to legislate may even depend upon the existence or non-existence of facts which can be shown only through a legislative inquest. Judicial inquiry into a committee's "legislative purpose" must

therefore not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly. The latitude is necessarily wide."[11] As was stated in *Townsend* v. *United States*, 95 F. 2d 352; 361 (C. A. D. C.), certiorari denied, 303 U. S. 664:

> A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress. *McGrain* v. *Daugherty*, 273 U. S. 135 * * *. A judicial inquiry relates to a *case*, and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates *all possible cases* which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad.[12]

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[11] For these reasons, it is immaterial that a committee has proposed little legislation; the power to conduct a hearing is not measured by recommendations for legislation or their absence. *United States* v. *Josephson*, 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838; *Townsend* v. *United States*, 95 F. 2d 352, 355 (C. A. D. C.), certiorari denied, 303 U. S. 664. Also, the possibility that invalid as well as valid legislation may result does not limit the power of inquiry. *Barsky* v. *United States*, 167 F. 2d 241, 245 (C. A. D. C.), certiorari denied, 334 U. S. 843.

[12] "* * * An investigation is precisely what it purports to be—an investigation. Sometimes attempts are made to discredit it by calling it a fishing expedition. It is not a trial based upon an indictment where the facts are already known and merely need presentation to a jury. It is a study by the government of circumstances which seem to call for study in the public interest. And the public hearing is usually, certainly in important investigations, preceded by a long period of extensive research" (Black, *Inside a Senate Investigation*, 172 Harper's Magazine 275, 278 (1936)).

B. THE RECORD OF THE HEARING, TOGETHER WITH THE RULE UNDER WHICH THE COMMITTEE OPERATES, SHOW THAT THE HEARING HAD A PROPER LEGISLATIVE PURPOSE

1. The record of the hearing at which petitioner testified, and the rule under which the Committee derives its powers and conducts its affairs (House Rule XI, *supra*, pp. 4–6), affirmatively establish that the Committee was acting pursuant to its delegated authority [12] and had a valid legislative purpose when it asked the questions which petitioner refused to answer, *viz.*, the purpose of investigating "in aid of legislation." As pointed out by the Chairman of the Committee at the very commencement of the series of hearings of which petitioner's interrogation was a part (see *supra*, pp. 8–10), the aim of the hearings was "to ascertain," pursuant to the mandate of "[t]he Congress of the United States," "the extent and success of subversive activities directed against these United States," and, on the basis of its findings, to make to the Congress "recommendations * * *

[12] We do not deal separately with Point III of petitioner's brief (Br. 76-95), urging that the Committee's inquiry exceeded its mandate from the House—see footnote 8, *supra*, p. 26—because petitioner's entire argument on that Point is based on his view that the Committee was engaging in "exposure for exposure's sake" and had no valid legislative purpose. We show in the text that that contention is invalid. Petitioner does *not* urge that, if the Committee did have a proper legislative purpose (as we believe), its actions were unauthorized by its charter from the House.

for new legislation" (R. 43; *supra*, p. 8).[14] The Chairman repeated the substance of this observation at the very hearing at which petitioner testified—in fact, as an incident to his instructing petitioner to answer the first of the series of questions which he refused to answer (*supra*, pp. 13–14).

The Chairman further pointed out that some forty-seven recommendations, previously made by the Committee, had been acted upon by Congress up to that time (*supra*, p. 8). Among these was the Internal Security Act of 1950, which had been enacted as the result of a congressional finding that "[t]here exists a world Communist movement * * * whose purpose it is, by * * * infiltration into other groups * * * and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world" and that this movement presents "a clear and present danger to the security of the United States" (§ 2, 64 Stat. 987, 989; 50 U. S. C. 781). The Chairman also stated that there had been referred to the Committee an important proposed amendment to this Act (*supra*, pp. 8–9), which would deny to Communist-controlled labor unions the benefits of the National Labor Relations Act

[14] The power of Congress and its committees to investigate Communist infiltration into groups and organizations has been consistently upheld. *E. g.*, *Dennis* v. *United States*, 171 F. 2d 986, 987–988 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Barsky* v. *United States*, 167 F. 2d 241, 244–247 (C. A. D. C.), certiorari denied, 334 U. S. 843; *United States* v. *Josephson*, 165 F. 2d 82, 90–91 (C. A. 2), certiorari denied, 333 U. S. 838; *Morford* v. *United States*, 176 F. 2d 54, 57 (C. A. D. C.), reversed on other grounds, 339 U. S. 258. See also *infra*, pp. 61–68.

(*supra*, pp. 7–8). Some four months following petitioner's appearance before the Committee, this bill became law (*supra*, p. 15).[15] Previously, Congress had enacted the non-Communist affidavit provisions of the Taft-Hartley Act in an effort to diminish Communist influence in trade unions (*Leedom* v. *International Union of Mine, Mill and Smelter Workers*, No. 57, this Term, decided December 10, 1956). It is thus clear that the Committee was investigating a subject with respect to which Congress not merely *might* legislate, but with respect to which it *had* already passed legislation, and with which it would shortly concern itself once again.

2. The particular information which the Committee sought to elicit from petitioner was clearly pertinent to this inquiry into the need for further legislation on Communist infiltration into labor unions. As we have already suggested (*supra*, pp. 29–30), "pertinency" in the field of legislative investigations is necessarily broader than "relevancy" in the law of evidence. See, *e. g.*, *Townsend* v. *United States*, 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664; *United States* v. *Orman*, 207 F. 2d 148, 153–154 (C. A.

[15] Petitioner argues that "the Committee report on the bill * * * did not claim there had been any hearings on the bill" (Br. 73). However, the very report to which petitioner refers (H. Rep. No. 2651, 83d Cong., 2d sess., p. 2) expressly states that the Committee had taken "voluminous testimony" to show the extent of Communist infiltration into labor unions, and quotes extensively from testimony taken both immediately prior to and subsequent to petitioner's testimony. The report includes excerpts (H. Rep. 2651, *supra*, pp. 13–15) from the testimony of Walter Rumsey, whose credibility had been put in doubt by petitioner (see *supra*, pp. 9, 12, and *infra*, pp. 36–38).

3). And the pertinency of information sought by the Committee must, of course, be determined with reference to the scope of the authority granted to it by Congress (*Barry* v. *United States ex rel. Cunningham*, 279 U. S. 597, 613).

In this case, the language of the enabling Rule (*supra*, pp. 4–6) was certainly broad enough to warrant an inquiry into the success of past Communist infiltrative tactics, particularly into unions, with a view to evaluating the impact of existing statutes and the need for new ones. If the extent of the success of subversive propaganda is to be determined, a showing of the numbers and identities of persons who are or have been influenced by it (as well as the importance of their positions in strategic areas of the economy) is not improper.[16]

Congress, if it has the power to inquire into Communism and the Communist Party for the purpose of considering pertinent legislation, must also, as observed by the Court of Appeals (R. 178, 182), have the power to ascertain the numbers and identities of individuals who belong to the Party. *Barsky* v.

[16] Similarly, if the investigation were concerned with the effect of interlocking directorates on the operation of the antitrust laws, it would be pertinent to inquire into the numbers and identities of persons serving on multiple boards of directors, the identities of the companies involved, and related questions. Nor would the investigating committee be limited in its inquiry to the present. The situation as it existed in the past, being relevant to a correct understanding of the situation as it exists at present, would clearly be pertinent to the question under inquiry. Moreover, examples of past infiltration would reveal future possibilities against which Congress might well wish to guard.

United States, 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Morford* v. *United States*, 176 F. 2d 54, 57 (C. A. D. C.), reversed on other grounds, 339 U. S. 258; *United States* v. *Lattimore*, 215 F. 2d 847, 851–853 (C. A. D. C.); *Barenblatt* v. *United States*, C. A. D. C., No. 13,327, decided January 3, 1957; *Sacher* v. *United States*, C. A. D. C., No. 13,302, decided January 3, 1957; *United States* v. *Kamin*, 136 F. Supp. 791, 799–800, 801 (D. Mass.). "Personnel," in short, "is part of the subject" (*Barsky* v. *United States*, *supra*, at 246).[17] Petitioner, as he himself acknowledged, had information on that aspect of the subject. In fact, we think a fair reading of his brief in this Court reveals that he does not seriously challenge the Committee's power to ask the questions it did, if its purpose was a legislative one and not primarily to "expose."

3. Petitioner argues, however, that the character of the Committee's questioning of him, and the fact that the Committee did not ask him all about his personal experiences connected with the infiltration of Communists into the unions with which he had been associated, evidenced an "unmistakable purpose of ex-

[17] See also *Marshall* v. *United States*, 176 F. 2d 473, 474–475 (C. A. D. C.), certiorari denied, 339 U. S. 933, where the court held that an inquiry into the finances and *personnel* of the National Federation for Constitutional Liberties was proper; and in *United States* v. *Norris*, 300 U. S. 564, this Court held that a resolution authorizing an inquiry into the names of persons and corporations subscribing to the campaign expenditures of various candidates was within the constitutional powers of Congress.

posure" for "exposure's sake" (Br. 24, 58–64). The record of the hearing disposes of this contention.[18]

The Committee clearly had sufficient reason to believe that petitioner might have information pertinent to the subject under inquiry—the extent of Communist infiltration into labor unions (R. 26). Petitioner had been an active leader in the labor movement for many years (*supra*, pp. 10–12), and he had been identified by two previous witnesses as a member of the Communist Party (*supra*, p. 9). These witnesses had likewise named as Communists other persons active in the labor field who the Committee had reason to believe were known to petitioner (*supra*, p. 9, 12). Nothing could be more natural, therefore, than for the Committee to call petitioner for the purpose either of corroborating or denying these other witnesses' testimony both as to himself and the others named. Petitioner concedes that a purpose of corroboration—at least on "matters of substantial importance" (Br. 69)—is a normal and legitimate reason for a committee to summon a witness.

Indeed, the need for corroboration here was particularly emphasized by the very fact that petitioner

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[18] As the majority below pointed out, "even if the unbridled power of exposure were claimed by some members of Congress, the claim would not establish its use in any particular inquiry" (R. 184). Petitioner himself refrains from making any "broadside charge" that the Committee here involved has as its "sole purpose" the "expos[ing of] individuals to scorn and retribution" (Br. 58). Each inquiry, as the majority below observed, must be judged "in its own setting and upon its own facts," and cannot be judged on the basis of speeches, newspaper articles and other generalities (R. 184).

himself, while he substantiated and corroborated much of what the earlier witnesses had testified to with respect to himself, contradicted them in several essential particulars. While he admitted having cooperated with the Communist Party from 1942 to 1947 in connection with union activities to such an extent that some persons might honestly have believed him to have been a Party member (*supra,* pp. 10–11), and while he had admittedly been familiar with Communist infiltration, over a period of years, into at least one segment of union functioning (*supra,* pp. 10–13), he flatly denied ever having been a Party member himself (*ibid.*). He further denied, again in contradiction of at least one of these witnesses, ever having paid or received Party dues (*supra,* pp. 11–12). Such a challenge to the testimony of other witnesses is manifestly pertinent and material to the course of an investigation. *United States* v. *Creech,* 21 F. Supp. 439 (D. D. C.). It is to be recalled, furthermore, that all of the persons about whom petitioner refused to answer questions were persons whom one of these earlier witnesses, Rumsey, had already, "during his recent testimony in Chicago," "identified as Communist Party members" (R. 84; see also R. 87, 89). Answers by petitioner to the questions would either have corroborated or further impeached Rumsey's testimony with respect to the question of whether these other persons about whom the Committee had inquired were or were not Party members. Since petitioner had already cast doubt on Rumsey's testimony with respect to his own alleged former Party membership, it is evident that the need for corrobora-

tion of Rumsey with respect to the other persons was not insubstantial. The Committee had the right to find out whether it should rely on Rumsey's testimony. See the opinion below at R. 184–185.

Quite apart from the corroborative aspects of the Committee's questioning of petitioner, his answers to the Committee's questions, if he had chosen to be co-operative, could well have tended to reveal, in and of themselves, the full extent of Communist penetration into the unions with whose affairs he had been familiar and could well have provided the basis for further inquiry as to the detailed character of such infiltration. Such questioning was plainly material to consideration of the bill which became the Communist Control Act of 1954, particularly its provisions which amended the Internal Security Act of 1950, relating to Communist-infiltrated unions (*supra*, p. 15).

Equally misplaced is petitioner's reliance on the character of the questions which the Committee "did not ask" him (Br. 60–64). It is argued, for example, that the Committee, when it was apprised by petitioner that he had engaged in an intraunion dispute "about compliance with the non-Communist oath provision of the Taft-Hartley Act," "did not ask one further question about the details of [this] internal fight," "which surely would have been of great significance to the Committee if it had been considering any legislation in the field of Communist infiltration of trade unions" (Br. 60). Again, it is said that "[t]he Committee did not want the benefit of petitioner's experiences as they related to Communist

techniques in labor unions; it did not want the benefit of petitioner's informed opinion about Communist operations in the labor field or the effect of existing or pending legislation upon those operations" (Br. 64). It so happened, however, that the Committee's concern at the time was not the nature of "Communist techniques in labor unions"—concerning which it can be presumed the Committee already had information—but primarily the *extent* of Communist penetration into these unions. That issue was to the forefront, and inquiry as to whether named individuals connected with the unions were or were not Party members was a logical and legitimate way of learning the answer.[19]

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[19] The dissenting opinion below points out that "[t]he Committee made no attempt to learn from Watkins either the total number of Communists in his union, or what positions Communists held in the union, or whether or how, or how far, or in what direction, they influenced the union" (R. 191). It then reasons that "[w]hether Communist infiltration of unions creates a need for legislation would seem to depend on the number, and the nature, extent, and effectiveness of the activities, of Communists in unions" (*ibid.*). One way, however, of ascertaining the "total number" of Communists in a union is to inquire of persons in a position to know who the Communists in the union are. This is probably the only reliable means of ascertaining the information sought, since a witness' naked statement that there are, say, *x* Communists in a given union is not subject to verification without ascertaining the identities of the individuals in question. (If the Congress did not have accurate information, the challenge would no doubt be made that there was no proof of need for further legislation on Communist infiltration.)

As for the remainder of the dissent's criticism of how the Committee operated, the answer is the one we have given in the text, namely, that the Committee was primarily interested in determining the extent of the Communist infiltration of the unions.

So long as the questions asked are pertinent, the determination of what is to be asked and what is not to be asked must be left to the discretion of the investigating committee, which knows what information it feels it needs at the time. To rule otherwise would amount to an undue infringement on the power of the legislature to conduct its own inquiries and substitute the courts as the overseers and supervisors of such investigations (see also *infra*, pp. 41–42, 47–48, 51–53).[20]

The need for further legislation in the field could well have depended, in the Committee members' minds, on the answer to this question. A congressional committee may legitimately inquire into one aspect of a subject which lies within its power to investigate without encompassing every conceivable aspect of the subject at a given hearing or series of hearings. Moreover, as we have suggested in the text, the Committee may have felt satisfied, as a result of its fifteen years of inquiry into the subject, as to *how* Communists operate and have been interested at the time only in *who* they were in the unions in question and *how many* there were. Furthermore, by refusing to answer the questions, petitioner had shown himself to be a recalcitrant witness, and the Committee could appropriately decline to question him further.

[20] Though petitioner did not plead the Fifth Amendment, and specifically disclaimed reliance on it (R. 86), it is obvious from his statement to the Committee that his refusal to answer was predicated solely on a desire to protect others, who to *his* "best knowledge and belief" were no longer Communists (*supra*, pp. 12–13). Even if petitioner had invoked the Fifth Amendment, it would not have served his purposes under these circumstances, since it is settled that the privilege against compulsory self-incrimination is purely personal (*Rogers* v. *United States*, 340 U. S. 367, 371; *Hale* v. *Henkel*, 201 U. S. 43, 69–70; *McAlister* v. *Henkel*, 201 U. S. 90, 91), and protects only against the possibility of criminal prosecution, not simply against exposure to public scorn and obloquy. *Brown* v. *Walker*, 161 U. S. 591, 609–610. See also *infra*, pp. 58–61.

4. During the course of a congressional investigation, it is inevitable that there will be a certain amount of "exposing" of various aspects and facets of the past lives of individuals. Effectively to perform its function of conducting investigations in order to determine what new legislation, if any, is necessary, a congressional committee must delve into the past as well as the present, and its findings must be made available to Congress. At times, individuals will suffer some hardship as a result of the exercise by Congress of its power of investigation, but the possibility of such hardship does not warrant a refusal to respond to a proper inquiry.

No more than a witness at a trial was petitioner free to refuse to respond to otherwise legitimate questions on the ground that they invaded his or others' "privacy", or might "expose" them, or bring unfavorable publicity or public disapproval. The public interest in the information outbalances the possible injury to the individual. This Congress has recognized, since 1862, in R. S. 103, 2 U. S. C. 193, which declares that no witness before a congressional committee is privileged to refuse to testify "upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous." See also, to the same effect, *Sinclair* v. *United States*, 279 U. S. 263, 295; *McGrain v. Daugherty*, 273 U. S. 135, 179–180; *United States* v. *Josephson*, 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838; *Townsend* v. *United States*, 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664;

Report on Congressional Investigations (Nov. 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, pp. 3–4 (fn. 33, *infra*, p. 67); see also *infra*, pp. 47–48, 57–68. Petitioner himself concedes that the power of Congress to investigate encompasses "exposure" where that is ancillary to a valid legislative purpose (Br. 24–25).

C. THE EXTRANEOUS "EVIDENCE" WHICH PETITIONER OFFERED TO PROVE THAT THE COMMITTEE'S OBJECTIVE WAS "EXPOSURE" WAS PROPERLY EXCLUDED AS INADMISSIBLE

1. The evidence allegedly showing that the Committee had asserted in the past a separate and independent power of exposure

Petitioner contends that the trial court erred in excluding proffered evidence allegedly tending to show that the Committee had asserted in the past a "power of exposure" separate from and independent of its power to investigate "in aid of legislation" (Br. 41). This evidence consisted of past reports of, and transcripts of earlier hearings before, the Committee, and excerpts from various statements which had been made by the Chairman and certain members of, and past chairmen and members of, the Committee on the floor of Congress and to the press. All such evidence, we submit, was properly held inadmissible.[21]

[21] At the trial, petitioner offered in evidence these excerpts from various committee reports, transcripts of hearings, and statements appearing in the Congressional Record and in newspapers (R. 60). Objection to this evidence was sustained on the ground that it was not material to the issues presented (R. 61–64). The proffered evidence was included in the record as an offer of proof (R. 62–64; Def. Exs. 6–9, R. 111–174).

(*a*) As we have shown (*supra*, pp. 31–42), the record of the Committee's hearing, taken together with its authorization from the House of Representatives, conclusively demonstrate the existence of a valid legislative purpose. Once the courts have made such a determination on the basis of the hearing record and the authorizing resolution, they have uniformly not allowed the recalcitrant witness to challenge the Committee's stated purpose by attempting to show, by extraneous evidence, that it was really pursuing some other objective.

In *In re Chapman*, 166 U. S. 661, 670, this Court, after pointing out that the questions propounded to the witness were clearly pertinent to a subject over which Congress had jurisdiction, stated, "We cannot assume on this record that the action of the Senate was without a legitimate object, and so encroach upon the province of that body." In *Sinclair* v. *United States*, 279 U. S. 263, 295, the Court found that a refusal by the committee to pass a motion directing that the inquiry should not relate to controversies pending in court, with which was coupled a statement by one of the members that there was nothing else about which to examine the petitioner, was not enough to show that the committee intended to depart from its legislative purpose. In *Barry* v. *United States ex rel. Cunningham, supra*, 279 U. S. 597, 611, 612, an attempt was made to show that, on the basis of a committee report, Cunningham had been illegally arrested for contempt of the Senate. This Court, however, reversing the Court of Appeals, held, *on the*

basis of the language of the resolution directing the witness to be brought before the bar of the Senate, that the purpose for which he had been taken into custody was solely to elicit testimony in response to questioning and not to arrest him for contempt.[22] In *McGrain* v. *Daugherty*, 273 U. S. 135, 177–178, in determining whether the object of a Senate inquiry had been to aid in legislating, the Court quoted with approval the following statement from *People, ex. rel. McDonald* v. *Keeler*, 99 N. Y. 463, 487:

> We are bound to presume that the action of the legislative body was with a legitimate object *if it is capable of being so construed,* and we have no right to assume that the contrary was intended. [Emphasis added.]

In *Morford* v. *United States*, 176 F. 2d 54, 58 (C. A. D. C.), reversed on other grounds, 339 U. S. 258, it was held that it was not error to refuse to permit the accused to attempt to prove that the Committee on Un-American Activities was seeking to obtain names of persons for the sole purpose of blacklisting.

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[22] With respect to the question of whether the Senate had abused its discretion in issuing the warrant of arrest, the Court stated (279 U. S. at 619–620):

"The presumption in favor of regularity, which applies to the proceedings of courts, cannot be denied to the proceedings of the Houses of Congress, when acting upon matters within their constitutional authority. * * *

"Here the question under consideration concerns the exercise by the Senate of an indubitable power; and *if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law.* That condition we are unable to find in the present case." (Emphasis added.)

See also *Barenblatt* v. *United States*, C. A. D. C., No. 13, 327, decided January 3, 1957.

Similarly, extraneous evidence impugning the conduct of congressional committees or the motives of individual members has always been held inadmissible. *United States* v. *Orman*, 207 F. 2d 148, 157 (C. A. 3); *Barsky* v. *United States*, 167 F. 2d 241, 250 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Eisler* v. *United States*, 170 F. 2d 273, 278–9 (C. A. D. C.), certiorari dismissed, 338 U. S. 883; *Dennis* v. *United States*, 171 F. 2d 986, 988 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *United States* v. *Josephson*, 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838; *United States* v. *Kamin*, 136 F. Supp. 791, 800–801 (D. Mass.).[23]

The principles which indisputably emerge from this long and consistent course of decision are that (a) the objective of the congressional inquiry should be gathered by the court solely from the record of the hearing and the text of the instrument authorizing the investigation, (b) extraneous materials alleged to traverse or challenge the purpose so determined should not be

[23] Cf. *United States* v. *Icardi*, 140 F. Supp. 383 (D. D. C.), holding that the Armed Services Committee of the House was not pursuing a valid legislative purpose when it questioned Icardi. The court concluded—from the transcript of the testimony at the hearing, the testimony of the Chairman of the Committee at the trial, and the report of the Committee to Congress on Icardi's testimony—that its purpose in questioning the witness (140 F. Supp. at 386–387) was the impermissible one of putting him under oath with a view to a possible perjury indictment as a resuk of his testimony.

considered,[24] and (c) the purpose of the inquiry should be hospitably sought, and held to be legitimate *"if it is capable of being so construed"* (*supra*, p. 44); "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be *obvious* that there was a usurpation of functions exclusively vested in the Judiciary or the Executive" (*Tenney* v. *Brandhove*, 341 U. S. 367, 378) (emphasis added). These rules spring from the respect owed by one coordinate branch of the Government to another, acting within its special sphere. Cf. *Missouri, Kansas & Texas Ry. Co.* v. *May*, 194 U. S. 267, 270. Just as the courts do not scrutinize the hidden motives of legislators in enacting laws (see, *e. g.*, *Sonzinsky* v. *United States*, 300 U. S. 506, 513–514), so they should not go behind the reasons officially given for conducting an inquiry thought necessary as a preliminary to the passage of legislation. And if, as petitioner urges is the case here, there be some doubt as to the true purpose of the inquiry, the courts should seek to uphold rather than to destroy.[25] Otherwise, the

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[24] Throughout our history, one of the common criticisms of congressional committees has been that they were being used by sponsors or members for political or personal reasons distinct from the declared aim of aiding the legislative functions of Congress. Cf. Dimock, *Congressional Investigating Committees* (Johns Hopkins Univ. Studies, Series XLVII, No. 1, 1929), p. 164.

[25] Despite petitioner's great emphasis, throughout his brief, on the need to avoid serious constitutional issues, he never applies this canon to the threshhold question of the purpose of the Committee's inquiry in his case. If he were to apply that principle, he would have to conclude that, to avoid the constitutional issue posed in Point I of his brief—"exposure for exposure's sake"—the inquiry should be construed as having a valid legislative purpose.

power to legislate effectively will be needlessly hampered or withdrawn by unwarranted judicial restraints.

Harshness, inequity, or even injustice in the conduct of legislative investigations cannot be cured by the courts where the inquiry does not exceed the bounds of its authority or trespass on constitutional rights. "In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Tenney* v. *Brandhove,* 341 U. S. 367, 378. While it may be true that "the presently recognized legal limitations upon the powers of Congressional investigating committees are not adequate to prevent individual abuse and injustice" (Van Alstyne, *Congressional Investigations,* 15 F. R. D. 471, 482), it is also true that "the ineffectiveness of the legal rules to provide a basis for judicial control should be recognized as reflective of the judicially felt necessity for leaving the investigative power of Congress largely free and unfettered, to the end that it may continue to serve its indispensable function as

one of the balance-wheels in the intricate operation of Constitutional government." *Id.*, at 483.[26]

(*b*) These "theoretical" conclusions are borne out by an analysis of the nature and implications of the rule for which petitioner argues. That rule would not, of course, be limited to the particular Committee involved in this case. It would apply to all committees of either House—indeed, to the Houses themselves and to the Congress as a whole. It would confer upon every recalcitrant witness before every committee of either House the right to attempt to show—by evidence *dehors* the resolution or rule under which the committee operated, and outside of the transcript of, and other evidence directly relating to, the particular proceedings of the committee in which the recalcitrance occurred—that the committee, despite the fact that the record of the particular proceedings showed that it was acting pursuant to a valid legislative purpose, nevertheless did not *in fact* have such a purpose.

The question which the trial court (or perhaps the jury) would be required to decide would not be a simple one of objective fact like, for example, whether a quorum of committee members was or was not present when a certain question was asked. Cf. *Christoffel* v. *United States*, 338 U. S. 84. The question

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[26] See also, *e. g.*, Frankfurter, *Hands Off the Investigations*, 38 New Republic 329, 331 (1924), reprinted at 65 Cong. Rec. 9080–9082; Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926); Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. of Pa. L. Rev. 691, 780 (1926); Morgan, *Congressional Investigations and Judicial Review: Kilbourn* v. *Thompson Revisited*, 37 Cal. L. Rev. 556 (1949).

would relate to a subjective, mental fact—*the purpose of the committee.* And since committees consist of members, the question would entail in last analysis an inquiry into the thoughts and mental processes of the individual committee members at the time the question or questions which the witness refused to answer were asked. Perhaps each committee member would be required, at the instance of the Government or the accused, to testify and be cross-examined at the trial as to what purpose he had in mind at the time the questions were asked. Clearly, the court (or jury) might very well find such testimony just as relevant and probative (if not more so), with respect to the issue of the committee members' purposes, as the sort of extraneous materials which petitioner sought to introduce in this case. But at this point the practical problems connected with the implementation, at an actual trial, of the rule petitioner advocates would surely become acute—not to speak of the propriety of calling legislators to the stand for this purpose. In addition to questions of the burden of proof and the burden of going forward, there would be grave problems of whose testimony to take, and what views should be accepted as authoritative.[27]

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[27] For instance, would all the committee members, however large the committee, be required to testify? If the hearing had been before the House or Senate itself, would each member of the House (or Senate) have to testify? Could each be called? If the hearing had been before a joint committee, and the court (or jury) found from the extrinsic evidence that the Senators on the committee actually had a valid legislative purpose but that the Representatives had not, which group's purposes would govern? What would be the case where a question was asked by a committee member shown not to have had a valid legislative purpose, even though the majority of the committee did have a proper purpose?

The problems we have suggested indicate the practical difficulties which would be connected with any attempt to implement in practice a rule of the type for which petitioner argues. Equally important, every trial under 2 U. S. C. 192 would, under petitioner's rule, run the risk of being converted from a trial of the accused for having refused to answer questions into a trial of the purposes, intentions, and motives of the committee's members. The bare possibility of so unseemly a spectacle argues strongly for the rule which we have suggested is the correct one, *viz.*, that, where it appears from the face of the record of a committee hearing and the rule or resolution under which the committee conducts its affairs that the hearing was pursuant to a valid legislative purpose, a recalcitrant witness should not be permitted at his trial to introduce allegedly impeaching evidence *dehors* these sources in an attempt to prove that the committee in fact was operating for some other purpose. *Supra*, pp. 28–30, 43–48. This, we submit, is the only rule which comports with the realities of the efficient and expeditious administration of criminal justice and gives due recognition to the deference owed by the courts to the Congress and its committees as a coordinate branch of the Government, yet fully respects the equally basic tenet that the power of Congress to investigate, broad as it is, "cannot be used to inquire into private affairs unrelated to a valid legislative purpose" (*Quinn* v. *United States*, 349 U. S. 155, 161).

2. *The evidence allegedly showing that the Committee already had the information it was seeking from petitioner in its files*

Also without merit is petitioner's contention (Br. 64–69) that it was error for the trial court to preclude him from attempting to adduce evidence which, allegedly, would have shown that the Committee already had "in its * * * files" the "information about himself and the 30 individuals which it attempted to extract from [him] in a public hearing" (Br. 64). The excluded evidence, he argues, would have been further proof that "the Committee's purpose in forcing him to testify was to publicly expose him and these 30 individuals rather than a bona fide effort to obtain [his] testimony * * * in aid of legislation" (*ibid.*).[28]

The point is founded on the manifestly untenable premise that a congressional committee, once it has

[28] In an effort to substantiate this claim, petitioner, before the trial, served on the Clerk of the Committee and the Clerk of the House of Representatives subpoenas calling for all the information in the possession of the Committee relating to himself and to the persons about whom he was questioned (R. 11–14). The Government moved to quash the subpoenas (R. 15) and petitioner filed counter motions requesting the court to rule that the documents specified in the subpoenas were relevant and material and to request the House of Representatives to permit the inspection and copying of all pertinent documents (R. 16). The court granted the motion to quash on the ground that the documents sought by the subpoenas were not relevant (R. 19). At the commencement of the trial, petitioner asked for a reconsideration of the ruling on the motions (R. 38). This motion was denied (R. 58). Petitioner's counsel then made an offer of proof of what would have been shown through the subpoenaed materials (R. 58–59; Def. Ex. 4, R. 94–109).

received testimony on some subject or subjects within its jurisdiction, may never question another witness on the same subject or subjects for corroborative or amplificatory purposes. See *Young* v. *United States*, 212 F. 2d 236, 239 (C. A. D. C.), certiorari denied, 347 U. S. 1015. As we point out above, moreover (see *supra*, pp. 36–38), petitioner's own testimony before the Committee in this case pointed up sharply the need for, and desirability of, substantiation of the earlier testimony of witnesses Spencer and Rumsey with respect to himself and the other individuals about whom the Committee had inquired. In any event, it is clear that Congress cannot be required "to exhaust the possibilities" (Br. 66) in its files before questioning a witness, any more than a witness in a judicial proceeding, whose testimony is relevant and unprivileged, can refuse to testify on the ground that the court already has enough evidence or that other sources of information should be used (see Br. 71, fn. 56).

The "least possible power" doctrine, relied on by petitioner (Br. 68–69), has no application to this case. The doctrine originated with reference to the extent of the implied power of Congress to deal with contempt, *i. e.*, the question of whether Congress possesses the power to punish for contempt to the same extent that the power is possessed by a court of law. *Anderson* v. *Dunn*, 6 Wheat. 204, 231; *Marshall* v. *Gordon*, 243 U. S. 521, 540–541. This Court, concluding that Congress does not have such power, held that Congress may deal with contempt only to the extent necessary to enable it to exert its recognized powers—

that Congress possesses, with respect to contempt, "the least possible power adequate to the end proposed." Therefore, said the Court, Congress is limited to committing the offender to imprisonment which may not extend beyond the session of the body before which the contempt occurred. *Anderson* v. *Dunn, supra,* at 230–231; *Marshall* v. *Gordon, supra,* at 540–542. Nothing in any of the decisions of the Court, however, suggests that Congress, or any committee of Congress, is subject to such a restrictive limitation in its search for information, on a subject within its jurisdiction, as a basis for possible new legislation. The whole course of the history of congressional inquiries shows that they have never been confined to the "least possible power"; rather, as we have pointed out (*supra,* pp. 28–30, 41–42, 43–48), their powers have been held to be broad and of wide latitude so that Congress may legislate "wisely" and "effectively" (*McGrain* v. *Daugherty,* 273 U. S. 135, 175; *Quinn* v. *United States,* 349 U. S. 155, 161).

II

THE INQUIRY WOULD NOT HAVE BEEN INVALID EVEN IF THE COMMITTEE'S PURPOSE HAD BEEN SIMPLY TO INFORM CONGRESS AND THE PUBLIC OF COMMUNIST ACTIVITIES IN LABOR UNIONS

It is our firm position, as Point I shows, that this case does not present the issues, which petitioner argues so strongly, of "exposure for exposure's sake." But it is appropriate to touch somewhat upon that subject, so that our silence not be thought to be an acceptance of petitioner's arguments or position.

At the outset, we note the ambiguity in petitioner's use of the term "exposure". Frequently, the connotation of the word, in petitioner's brief, seems to include a specific purpose to call down upon petitioner and his former associates "public scorn", "ridicule", or "retribution" (see, *e. g.*, Br. 24, 29, 39). Sometimes, however, the argument seems, more broadly, to be that a congressional committee has no power of "exposure" even in the sense of making information public for the sake of informing Congress and the public of certain facts which they ought to know, though no specific proposed legislation is being considered by the committee (see, *e. g.*, Br. 25–28). It is with this latter aspect of petitioner's argument that we shall deal in this Point. The claim that the Committee was merely attempting to bring "public scorn" on petitioner or his past associates is so clearly contradicted even by the materials petitioner cites that it need not be answered.

In the first place, the existence of a purpose on the part of the Committee to combat subversive activities by publicity would not mean that the inquiry was not also in aid of legislation. A disclosure, for example, that a certain organization, such as a labor union, was led by persons who were subservient to a foreign government—or the extent to which the Communist Party and its ideology have penetrated the fabric of our national life—would both tend to open the eyes of the public and of Congress to the nature of the organization, and would also be relevant in determining whether further legislation in that field was desirable. It cannot be said, therefore, that a purpose

to inform Congress and the public about Communist infiltration in labor unions is necessarily antagonistic to a valid legislative objective. As we have shown in Point I, *supra*, pp. 31–33, the Committee did have possible legislation in mind when it questioned petitioner. That it may also have been desirous of acquainting Congress and the public with Communist activities in the labor movement would not detract from this objective.

But even if the Committee had no possible legislation in mind in questioning petitioner, and was moved solely by the desire to bring information to the attention of Congress and the public, there is considerable support amongst students of congressional power for the view that the "informing function" of Congress is one of the inherent powers of the legislatures of representative governments.[29] Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 205, 206, n. 227 (1926); Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 Univ. of Pa. L. Rev. 691, 811–814 (1926); Galloway, *Investigative Function of Congress*, 21 Am. Pol. Sc. Rev. 47, 62–64 (1927); Cousens, *Investigations Under Legislative Authority*, 26 Georgetown L. J. 905, 918 (1938); McGeary, *The Developments of Congressional Investigative Power*, p. 104; Woodrow Wilson, *Congressional Government* (1885 ed.), p. 303, as quoted in *Tenney* v. *Brandhove*, 341 U. S. 367, 377, and *United States* v. *Rumely*, 345 U. S. 41, 43; Frank-

[29] A representative democracy relies upon the creation of a favorable public opinion for the acceptance and thus the enforcement of new legislation.

furter, *Hands Off the Investigations,* 38 New Republic 329 (1924), reprinted at 65 Cong. Rec. 9080–9082.

It very well may be that Congress can, under the Constitution, undertake investigations for the sole purpose of publicizing information, at least so long as the matters to be disclosed are related to a substantive congressional power. It is settled that Congress, in the exercise of its regulatory power, may in certain circumstances authorize the receipt and publicizing of such information. *United States* v. *Harriss,* 347 U. S. 612; *Electric Bond & Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419. *Harriss* upheld the Federal Regulation of Lobbying Act, which "provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose" (347 U. S. at 625). In the *Electric Bond & Share* case, this Court observed, in relation to the registration provisions of the Public Utility Holding Company Act, that "the requirement of information is in itself a permissible and useful type of regulation" (p. 439). This method of protecting the public interest by requiring the disclosure of information in fields subject to the power of Congress has been employed in a number of other statutes. *E. g.,* newspapers using the mails, 37 Stat. 533, 39 U. S. C. 233 (*Lewis Publishing Co.* v. *Morgan,* 229 U. S. 288); Securities Act of 1933, 48 Stat. 74, 15 U. S. C. 77a; Food, Drug and Cosmetic Act, 52 Stat. 1040, 1041, 21 U. S. C. 321; Alien Registration Act, 54 Stat. 673, 8 U. S. C. 452; registration of lobbyists, 60 Stat. 839, 2 U. S. C. 261; registration of for-

eign agents, 52 Stat. 631, 22 U. S. C. 611; registration of certain subversive organizations, 54 Stat. 1201, 18 U. S. C. 2386.

Indeed, the principle of disclosure has been advanced by persons zealous to protect civil liberties as the best method of dealing with the Communist problem in this country. The Report of the President's Committee on Civil Rights (*To Secure These Rights,* U. S. Govt. Printing Office, 1947) concluded that (pp. 52, 53):

> The principle of disclosure is, we believe, the appropriate way to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups.
>
> * * * * *
>
> The federal government * * * ought to provide a source of reference where private citizens and groups may find accurate information about the activities, sponsorship, and background of those who are active in the market place of public opinion.

See also *United States* v. *Josephson,* 165 F. 2d 82, 89 (C. A. 2), certiorari denied, 333 U. S. 838.

III

THE COMMITTEE DID NOT VIOLATE PETITIONER'S RIGHTS UNDER THE FIRST AMENDMENT BY REQUIRING HIM TO STATE WHETHER TO HIS KNOWLEDGE VARIOUS OF HIS PAST ASSOCIATES WERE MEMBERS OF THE COMMUNIST PARTY

Petitioner also contends (Br. 96–119) that "the compelled disclosures sought by the Committee" vio-

lated his rights under the First Amendment (Br. 96). "Requiring petitioner to disclose the past political affiliations of his associates," he argues, "abridges his right of political privacy as well as theirs. Compelled public disclosure of past political associations invades the privacy under which such associations were undertaken. It is, in effect, a penalty on political association which serves as a restraint on political activity. The right of political association, if it is to be meaningful, must include the right not to be subjected to public humiliation for such association" (Br. 101). The argument must be rejected for several reasons.

A. SINCE PETITIONER ADMITTED HIS OWN PAST COMMUNIST ASSOCIATIONS, AND WAS WILLING TO IDENTIFY PAST ASSOCIATES WHO HE BELIEVED WERE STILL PARTY MEMBERS, HIS REFUSAL TO NAME ASSOCIATES WHO HE BELIEVED HAD SINCE QUIT THE PARTY WAS AN ATTEMPT TO VINDICATE, NOT HIS, BUT THEIR, RIGHTS

Assuming, *arguendo* (but see *infra*, pp. 61–68), that petitioner would have been justified under the First Amendment in refusing to state whether he was or ever had been a member of the Communist Party, or otherwise affiliated or associated with it, it is clear that that was not the nature of his refusal here.

Petitioner told the Committee that he was entirely willing to "answer any questions which this committee puts to me about myself" (*supra*, p. 12). Accordingly, he admitted that, during the years 1942 to 1947, he had made contributions to Communist causes, signed petitions for Communists, attended union caucuses at which Communist Party officials were

present, participated in union meetings together with well-known Communists, and attended a public meeting of the Communist Party at which the Party head, Foster, had spoken (*supra*, pp. 10–11). He testified that he had been fully aware that the general program and policy of the Party had been to attempt to gain control of the unions with which he had been affiliated, and that it was "probably correct" to say that the discussions he had had with individuals known by him to be Communists had been "in connection with their desire to control * * * the union's policy and activities" (*supra*, p. 11). While he denied ever having been a "card-carrying member" of the Party (*supra*, p. 11), he freely admitted having "cooperated with the Communist Party" and "participated in Communist activities" during the years in question "to such a degree that some persons may honestly believe" that he was a Party member (*supra*, pp. 10–11).

A more complete and candid statement of his past political associations and activities (treating the Communist Party for present purposes as a mere political party) can hardly be imagined. Petitioner certainly was not attempting to conceal or withhold from the Committee his own past political associations, predilections, and preferences.[30] Furthermore, petitioner told the Committee that he was entirely willing to identify for the Committee, and answer any

[30] Significantly, the First Amendment, as we have pointed out (*supra*, p. 13), was at no time mentioned by anyone during the colloquy between petitioner and the Committee members. Cf. *Ullmann* v. *United States*, 350 U. S. 422, 439, fn. 15.

questions it might have concerning, "those persons whom I knew to be members of the Communist Party", provided that, "to [his] best knowledge and belief", they still were members of the Party (*supra*, pp. 12–13). And he did identify one of the persons about whom the Committee questioned him, Joseph Stern, as having to his knowledge "carried on Communist Party activities in the Quad City area" during the years in question (*supra*, p. 14). It was only those of his past associates, known to him as having been Communist Party members "or otherwise engaged in Communist Party activity", who "to [his] best knowledge and belief" had since "removed themselves from the Communist movement," whom petitioner refused to identify for the Committee (*supra*, pp. 12–13).

In these circumstances, there can be no question, we submit, that what petitioner was actually seeking to do before the Committee was to protect his former associates (in this latter category) from possible embarrassment or humiliation which they might incur as the result of his public identification of them in their past capacities. He was attempting to vindicate, if anyone's, not his, but their rights to political privacy under the First Amendment (assuming, again *arguendo*, that that Amendment confers such rights). But it is settled that one cannot invoke the constitutional rights of another; the asserted deprivation must be personal to the claimant. See, *e. g.*, *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 347–348; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 479; *Tileston* v. *Ullman*, 318 U. S. 44, 46.

Moreover, we show below (*infra*, pp. 61–68) that the authorities in this field (*e. g., Barsky* v. *United States*, 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843; *United States* v. *Josephson*, 165 F. 2d 82, 90–92 (C. A. 2), certiorari denied, 333 U. S. 838; *Lawson* v. *United States*, 176 F. 2d 49, 51–52 (C. A. D. C.), certiorari denied, 339 U. S. 934) unanimously hold that not even the witness himself may decline on First Amendment grounds to disclose whether he is or ever has been a member of the Communist Party. Petitioner's argument goes far beyond even that contention. The reasons which make that contention untenable thus apply *a fortiori* to the present argument.

B. A WITNESS BEFORE A CONGRESSIONAL COMMITTEE INQUIRING INTO THE NATURE AND EXTENT OF COMMUNIST INFILTRATION HAS NO RIGHT UNDER THE FIRST AMENDMENT TO DECLINE TO DISCLOSE WHETHER HE IS OR HAS BEEN A MEMBER OF THE COMMUNIST PARTY

1. It certainly cannot be denied, and petitioner apparently does not question (see Br. 110–111), that Congress has power to inquire into, and to legislate with respect to, the subjects of Communism and the Communist Party. See *American Communications Assn.* v. *Douds*, 339 U. S. 382; *Osman* v. *Douds*, 339 U. S. 846; *Galvan* v. *Press*, 347 U. S. 522; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Carlson* v. *Landon*, 342 U. S. 524; *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; *Dennis* v. *United States*, 341 U. S. 494; *Adler* v. *Board of Education*, 342 U. S. 485. But "[i]f Congress has power to in-

quire into the subjects of Communism and the Communist Party," as was observed in *Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843,—

> * * * it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject.

The *Barsky* decision on this point has since been affirmed and reaffirmed many times. Thus, in *Lawson* v. *United States,* 176 F. 2d 49, 52–53 (C. A. D. C.), certiorari denied, 339 U. S. 934, the court said that, under "[t]he combined rationale of these recent decisions as to this very Committee [the House Committee on Un-American Activities]", there was no longer the "slightest doubt" that the Committee's—

> * * * power of inquiry includes power to require a witness before the Committee to disclose whether or not he is a Communist, and that failure or refusal of a witness so to disclose is properly punishable under 2 U. S .C. § 192.

As recently as January 3, 1957, the court below, again reaffirming its *Barsky* decision, pointed out that (*Barenblatt* v. *United States,* No. 13,327, slip opinion, p. 15)—

> * * * If Congress can legislate against a threat of communism which is reasonably apprehended, it can, consistently with the meaning of the Constitution and the language in the *Quinn* case [*Quinn* v. *United States,* 349 U. S.

> 155] quoted above, inquire of a witness whether or not he is a communist, subject to the constitutional limitations imposed by the privilege against self-incrimination.

To the same effect, see *United States* v. *Josephson,* 165 F. 2d 82, 90–92 (C. A. 2), certiorari denied, 333 U. S. 838.[31]

This is not to say that Congress has any "general power to inquire into political beliefs and associations" (*Barenblatt* v. *United States, supra,* slip opinion, p. 16). But it clearly does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and all other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. This is because there is—at the very least—the strongest reason to believe that that organization, dominated and controlled by a foreign power, seeks, under the cloak and style of a domestic political party, to subvert and destroy the American form of government by force and violence and other unconstitutional means. See, *e. g., American Communications Assn.* v. *Douds,* 339 U. S. 382, 424–433 (opinion of Mr. Justice Jackson); *Dennis* v. *United States,* 341 U. S. 494, 562–566 (Mr. Justice Jackson, concurring);

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[31] See also *Eisler* v. *United States,* 170 F. 2d 273 (C. A. D. C.), certiorari dismissed, 338 U. S. 883; *Marshall* v. *United States,* 176 F. 2d 473 (C. A. D. C.), certiorari denied, 339 U. S. 933; and *Dennis* v. *United States,* 171 F. 2d 986 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Sacher* v. *United States,* C. A. D. C., No. 13,302, decided January 3, 1957.

United States v. *Dennis*, 183 F. 2d 201, 206, 212–213 (C. A. 2), affirmed, 341 U. S. 494; *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 562–573 (C. A. D. C.), reversed on other grounds, 351 U. S. 115. See also Internal Security Act of 1950, c. 1024, § 2, 64 Stat. 987, 50 U. S. C. 781; Communist Control Act of 1954, c. 886, § 2, 68 Stat. 775, 50 U. S. C. (Supp. II) 841.[32] Congress, in short (*Barenblatt* v. *United States*, *supra*, slip opinion, p. 16),—

> * * * does have that power [to inquire into political beliefs and associations] where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has.

In particular, Congress has the right to inquire into possible membership in the Communist Party of leaders of labor unions and those active in union undertakings. The *Douds* cases, *supra*, p. 61, show that, in this field of union activity, the Communist Party cannot be treated as an ordinary political party nor associations with it as ordinary associations. It is far too late in the day to assert that Communist activity in the labor movement is not a fit subject for congressional concern.

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[32] Petitioner himself admits that there can be no "doubt that legislative requirements for information may support congressional inquiry into membership in the Communist Party under certain circumstances; the world-wide and domestic Communist menace is certainly an appropriate subject of congressional concern" (Br. 110–111).

2. Petitioner's attempts to distinguish these decisions and their rationale are unavailing. "[W]hatever justification", he says, "the theory that 'personnel is part of the subject' might have provided for the identification of Communists in strategic positions when Congress first initiated investigations into Communist activities, it cannot now support continued identification of those who were Party members long ago. Moreover, it certainly provides no justification for *re-identifications* which can shed no light upon either the former or the present 'nature and scope of the program and activities' of the Communist Party" (Br. 117–118; petitioner's emphasis). But, clearly, Congress is not precluded from inquiring into the manner and extent of past Communist infiltrations into strategic areas of our economy by the fact that the Party members responsible for such successful penetrations in the past may since have quit the Party or otherwise removed themselves from the Communist movement. Past membership is certainly some evidence of present membership; surely the Committee was not bound to rely, as petitioner appears to assume it should have, on petitioner's "best knowledge and belief" (*supra,* pp. 12–13) as to whether persons known to him to have been members of the Party in the past had since left the movement. Furthermore, past membership and infiltration may well indicate future dangers to be guarded against. And the fact that a witness before the Committee or a person about whom the witness is questioned may previously have been identified as a Party member is surely no bar to the Committee's seeking confirmation or corroboration

of the earlier identification by interrogating either the individual identified or another person having knowledge of the facts. As we have previously pointed out (*supra*, pp. 36–38), this very case presents a clear example of the ever-present necessity for substantiation of prior witnesses' testimony.

3. Inherent in petitioner's argument is the contention that a "right to silence" is protected by the First Amendment. But even if it is accepted that disclosures before the Committee may result in unfavorable publicity and discourage persons from subjecting themselves to the risk of similar unfavorable reaction to their associations and expression of views, it does not follow that the First Amendment is in any way violated. For the sanction growing out of such disclosures is not a legal one, but, at most, the sanction of public opinion, against which the First Amendment does not guarantee. Thus, a hostile public opinion does not excuse a witness from being required to give relevant testimony at a judicial trial. Similarly, a prospective juror may be asked questions relating to his views and political beliefs at the *voir dire* examination, and these are permitted if relevant and germane. This is because the public interest in full disclosure is considered to outweigh any hardship resulting to the individual. The same is true of compelled testimony of witnesses before a congressional committee. See, *e. g.*, Nutting, *Freedom of Silence: Constitutional Protection Against*

Governmental Intrusions in Political Affairs (1948), 47 Mich. L. Rev. 181, 213–222.[33]

It is not this sort of indirect consequence of public testimony with which the First Amendment is concerned. The Amendment does not provide that Congress may not inform itself; it provides that "Congress shall make no law * * * abridging the freedom

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[33] See also the Report on Congressional Investigations (November 22, 1948) of the Committee on the Bill of Rights of the Association of the Bar of the City of New York, which states (pp. 3–4):

"There seems to be prevalent a belief, although somewhat vague, that the individual American is endowed with some sort of a 'right of privacy' which exempts him from inquiry into his private affairs. One hears it suggested that such an inquiry violates some protection afforded by the Bill of Rights. We know of no 'right of privacy' or constitutional guarantee which makes a citizen immune to the giving of evidence where an inquiry is being made by a legally constituted Congressional committee engaged in a legitimate investigation—any more than a citizen is immune from having to give relevant testimony in a trial before a court of law. The questions, of course, must be relevant to the subject under investigation, and the decisions of the Supreme Court already protect the individual from being required to answer questions which are not pertinent to the inquiry. But, assuming that the question is material and relevant to an inquiry in aid of a lawful purpose of Congress, we do not believe that the individual is immune from being required to answer merely because the question delves into his private affairs, *his previous utterances or his affiliations, political or otherwise*. It is not necessary for the purpose of this report to attempt to predict what the courts may hold with respect to the inquiry into an individual's privately entertained belief, except to say that at all events a court would probably insist that the relevancy of such an inquiry be clearly established and that this would be true only in rather exceptional circumstances." [Emphasis added.]

of speech, or of the press." It was designed to prevent attempts by law to curtail freedom of speech.[34] It was not intended to protect persons against unfavorable public opinion, even though such opinion may be stimulated by disclosures made to or by an investigating body. Nor does the possibility that persons may voluntarily refrain from expressing their views in order to avoid a hostile public reaction mean that any law has abridged their freedom of speech. Cf. *United States* v. *Harriss*, 347 U. S. 612, 626.[35]

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[34] The purpose of the Amendment has been described as the promotion of that free and open discussion which is "indispensable to the discovery and spread of political truth" (Mr. Justice Brandeis, concurring in *Whitney* v. *California*, 274 U. S. 357, 375).

Compare:

"* * * [T]heir purpose [First Amendment freedoms] has evidently been to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them." (2 Cooley, *Constitutional Limitations* (8th ed), p. 885.)

[35] *United States* v. *Rumely*, 345 U. S. 41, cited by petitioner (Br. 97–98), is not to the contrary. There, this Court expressly refrained from deciding the relationship between the First Amendment and the congressional power to investigate. Furthermore, that case did not relate to questioning a witness as to his past or present membership in the Communist Party, in pursuit of a valid legislative purpose. The legitimacy of such a question, as we have shown (*supra*, pp. 61–66), has uniformly been sustained. The other decisions of this Court relied on by petitioner (Br. 97–100, notes 82–89) are likewise inapplicable. They were all concerned with the constitutionality of statutes which actually imposed restrictions on speech or publication.

IV

2 U. S. C. 192, READ TOGETHER WITH THE RULE OF THE HOUSE UNDER WHICH THE COMMITTEE ON UN-AMERICAN ACTIVITIES DERIVES ITS POWERS, IS NOT UNCONSTITUTIONALLY VAGUE

Petitioner next argues (Br. 119–124) that "2 U. S. C. 192, read together with the authorization of the Committee on Un-American Activities, is so vague and indefinite as to deprive petitioner of due process of law" (Br. 119). Pointing out that 2 U. S. C. 192, R. S. 102, as amended (*supra*, pp. 3–4) punishes the refusal by a witness before a congressional committee to answer any question "pertinent to the question under inquiry", he argues that "[t]he witness * * * must resolve for himself whether a question by the committee is part of an *authorized inquiry* and this he can only do by reference to the statute or resolution purporting to authorize the investigation" (Br. 119; petitioner's italics). "Therefore," he continues, "the contempt statute must be read together with the enactment setting forth the authorization of the particular committee, in order to decide whether the witness was able to make the determination that the inquiry was authorized with the accuracy required by the due process clause" (Br. 119–120). But, the argument concludes, the rule under which the House Committee on Un-American Activities operates (House Rule XI, *supra*, pp. 4–6), in defining the Committee's investigatory powers, uses such vague terms and expressions—*e. g.*, "the extent, character, and objects of un-American propaganda activities" and "all other questions in

relation thereto that would aid Congress in any necessary remedial legislation"—as to provide "no reasonably ascertainable standard of guilt" (Br. 120).

Substantially the same contention has been repeatedly advanced and as often rejected. *Barsky* v. *United States,* 167 F. 2d 241, 247–248 (C. A. D. C.), certiorari denied, 334 U. S. 843; *Dennis* v. *United States,* 171 F. 2d 986, 987–988 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Lawson* v. *United States,* 176 F. 2d 49, 52–53 (C. A. D. C.), certiorari denied, 339 U. S. 934; *Morford* v. *United States,* 176 F. 2d 54, 56 (C. A. D. C.), reversed on other grounds, 339 U. S. 258; *Marshall* v. *United States,* 176 F. 2d 473, 474 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Emspak* v. *United States,* 203 F. 2d 54, 56 (C. A. D. C.), reversed on other grounds, 349 U. S. 190; see also *United States* v. *Josephson,* 165 F. 2d 82, 87–88 (C. A. 2), certiorari denied, 333 U. S. 838; cf. *Sacher* v. *United States,* C. A. D. C., No. 13,302, decided January 3, 1957. In *Emspak* and its companion cases, the issue was argued here but was not reached by the Court (see *Emspak,* 349 U. S. 190, 202; *Quinn* v. *United States,* 349 U. S. 155, 170; *Bart* v. *United States,* 349 U. S. 219, 223). As applied to petitioner, we submit that the statute and rule, read together, are clearly valid for the reasons set forth in the Brief for the United States in *Emspak,* No. 9, Oct. Term, 1954 (No. 67, Oct. Term, 1953), pp. 66–71, 78–95. We request the Court to consider the arguments in that brief, nine copies of which are being filed herewith.

Briefly summarized, those arguments, as applied to this petitioner, are as follows:

First, the only constitutional questions which are properly before the Court are those which relate to the particular questions which petitioner was asked and refused to answer. Petitioner's effort to raise questions, not presented by this record, relating to other witnesses, to other questions, and to other proceedings is misconceived.

Secondly, the strict standards of definiteness applicable to criminal statutes are inapplicable to rules or resolutions establishing congressional committees and defining their powers. If petitioner's contention were sound, it is unlikely that the grant of authority to any congressional committee has sufficient specificity to sustain the conviction of any witness who refused to give testimony before it. For example, the Committees on Interstate and Foreign Commerce have jurisdiction over "interstate and foreign commerce generally" (60 Stat. at 817, 826); the Committees on the Armed Services have jurisdiction over "common defense generally" (*id.* at 815, 824); and the Committees on Appropriations have jurisdiction over "appropriation of the revenue for the support of the Government" (*ibid.*). These definitions of the powers of congressional committees are obviously far broader than the standards of definiteness required in criminal statutes. Indeed, they are broader than the broadest acceptable standards which Congress may lay down in delegating authority to executive departments and agencies. Yet no one has ever suggested that these committees are unconstitutional, or

that they cannot compel testimony by the power of subpoena, because of the broad sweep of their general authority. The reason is clear: To judge congressional resolutions defining powers of committees by the normal standards of definiteness applicable to criminal statutes would invalidate every general assignment of committee jurisdiction and hopelessly hobble the vital work which Congress accomplishes through its committees.

Thirdly, no problem of definiteness is presented so long as the subject of the specific, actual inquiry at which the witness is questioned has been disclosed. The clause of 2 U. S. C. 192 punishing refusal to answer any question "pertinent to the question under inquiry" is not made unconstitutionally indefinite by the generality of the statute, resolution, or rule creating the committee. If we assume that the witness must have a basis for judging the pertinence of the "question under inquiry" in order to determine whether he must answer, it does not follow that such information is obtainable only from the instrument creating the committee. The precise question under inquiry in an investigation would normally be obvious, as it was here, at the time of the question.[36] A witness who honestly had doubts could ask the committee before deciding whether to answer a particular question. The decisions sustaining convictions for violations of administrative regulations promulgated under some relatively broad statutory standard of au-

[36] Petitioner cannot deny that he knew that the subject-matter of the inquiry was Communist infiltration into labor unions.

thority are analogous. In such cases, the general standard under which the regulation is promulgated need not meet the standard of specificity required of a criminal statute. It is sufficient if the regulation itself meets that standard.

Finally, the challenged terms of Rule XI, as they apply to this case, are, in any event, sufficiently precise in their context to satisfy any reasonable standard of definiteness. The term "un-American", in the phrase "un-American propaganda activities" as it appears in clause (i) of the pertinent passage of the rule (Rule XI (1) (q) (2); see *supra,* p. 5), is clothed with specific content and meaning by its use in the phrase "un-American propaganda", as used in clause (ii). In the latter clause, the propaganda is further described as propaganda "instigated from foreign countries or of a domestic origin" which "attacks the principle of the form of government as guaranteed by our Constitution." It would be unreasonable to demand greater specificity of language in the instrument which constitutes, in effect, the Committee's "charter." By this time, there can be no doubt that these words apply to activities of Communist Party members within various institutions of American life.[37]

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[37] Petitioner's contention has no more merit, we submit, than would have a similar contention—by one who had contumaciously refused as a witness at a criminal trial in a federal district court to answer a question pertinent to the matter under inquiry, after having been ordered to do so by the court—that he could not constitutionally be held guilty of contempt of court because the statute whence the court derives its criminal juris-

V

PETITIONER WAS NOT ENTITLED TO DISMISSAL OF THE INDICTMENT BECAUSE OF THE PRESENCE OF GOVERNMENT EMPLOYEES ON THE GRAND JURY, NOR DID HIS ALLEGATIONS AND OFFER OF PROOF ENTITLE HIM TO A HEARING ON THAT ISSUE

Petitioner finally contends (Br. 125–132) that the trial court erred in denying (R. 10–11), without opinion, his motion (R. 4–10) to dismiss the indictment on the ground that "there were less than 12 members of the Grand Jury who concurred in finding the indictment who were free from prejudice or bias against [him]" (R. 4), or, in the alternative, to grant a hearing at which he might "determine which grand jurors concurred in finding the indictment and offer proof by examination of the grand jurors and otherwise that bias or prejudice existed on the part of the requisite number of the grand jurors" (*ibid.*). The basis of the asserted bias and prejudice was the

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diction (which provides simply that "[t]he district courts of the United States shall have original jurisdiction * * * of all offenses against the laws of the United States" (18 U. S. C. 3231)) contains so vague and general a grant of power that conviction under the contempt statute (18 U. S. C. 401), read together with the statute defining the court's jurisdiction, would offend against due process. It could be argued by the contumacious court witness, in the same vein that petitioner argues here, that whether a given act or omission constitutes an "offense against the laws of the United States" is often so highly problematical that the rule requiring definiteness in a criminal statute would be breached by making a witness at a criminal trial decide at his peril whether the alleged act or omission for which the accused was on trial did or did not constitute such an offense, so as to give the court power to compel the witness' testimony.

alleged fact, stated on information and belief, that eleven of the grand jurors were government employees and that, of the remainder, some were "close associates" or "relatives" of government employees (R. 5). It was alleged, and offered to be proved at the requested hearing, that all such persons, by reason of the Government's loyalty-security program, are so affected by a "climate of * * * fear and intimidation" (R. 9) concerning all aspects of Communism as to render them unable, freely and without intimidation, to vote against the indictment of persons accused of crimes which are in any way connected with that subject (R. 6–10).

This contention, which, though urged in the Court of Appeals, is not discussed in either of the opinions, is substantially identical with one of the contentions made by the petitioner in No. 137, this Term, *Ben Gold* v. *United States*, pending on writ of certiorari.[38] Our reply in that case (Brief for the United States, pp. 123–138) is accordingly adopted in this case, and the Court is asked to consider those arguments in connection with this case.

It should be pointed out, furthermore, that, to the extent that the instant case differs from *Gold* on its facts, the difference does not favor petitioner. For here, as in *Emspak* v. *United States*, 203 F. 2d 54, 58–60 (C. A. D. C. [concurring opinion]), reversed on

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[38] Substantially the same issue was involved in *Quinn* v. *United States*, 349 U. S. 155, and *Emspak* v. *United States*, 349 U. S. 190. However, the Court found it unnecessary to reach this issue in either case (*Quinn*, 349 U. S. at 170; *Emspak*, 349 U. S. at 202).

other grounds, 349 U. S. 190, the trial court was aware that the fact of petitioner's refusal to answer the Committee's questions was not in dispute. The defense was rather "a legal justification for the refusal" (*id.* at 59). Since "[t]he function of the grand jury is merely to determine whether the evidence before it, if unexplained, would justify a verdict of guilty" (*id.* at 60)—since, that is to say, "[o]ur legal procedure does not include provision for the presentation to a grand jury of matters of defense or justification" (*id.* at 59)—it is as true here as it was in *Emspak* that "[n]o circumstance was brought to the court's attention which demonstrated that this grand jury was unsuitable to take that action" (*id.* at 60).

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

WILLIAM F. TOMPKINS,
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Attorneys.

JANUARY 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted pursuant to requests from the bench, during oral argument, to outline the procedure customarily followed whereby witnesses before congressional committees who refuse to answer pertinent questions or to produce subpoenaed books and records are certified to the appropriate United States Attorney for prosecution. The customary procedure is as follows:

The chairman or other member of the committee before which the act or acts constituting the contempt occurred presents on the House or Senate floor a written report from the committee giving full details of the pertinent facts. This report, *inter alia*, recites the questions which the witness refused to answer and states that the questions were pertinent to the subject

420689—57——1

under inquiry by the committee and deprived it of necessary and pertinent testimony. Excerpts from the transcript of the proceedings before the committee, showing the exact context in which the questions were asked and the refusals made, are included in the report. In some instances the report is orally read by the Clerk; in other instances it is read in part, following which, by unanimous consent, on motion of the member presenting the report, further reading of the report is dispensed with and it is pointed out that copies of the report are available to all members. Sometimes the report is not read orally, but is summarized by the member presenting it, or a written summary of it is read.

The committee chairman or other member of the committee next offers a proposed resolution directing the Speaker of the House or President of the Senate, as the case may be, to certify the report of the committee as to the refusal of the witness in question to answer questions or produce books, "together with all of the facts in connection therewith," to the appropriate United States Attorney "to the end that the [witness] may be proceeded against in the manner and form provided by law." This resolution is then thrown open to debate, following which it is voted upon. Sometimes the debates are lengthy; sometimes they are brief; sometimes there is no debate. Where a number of related resolutions, each involving a different witness, come up for debate successively, it frequently happens that the first few resolutions are extensively debated and the later ones more briefly or not at all, but usually in such cases the range of

the debates on the earlier resolutions is in fact broad enough to be applicable to all of the resolutions. When the vote is taken, the yeas and the nays may or may not be recorded, depending on whether or not a demand therefor is made by a member. If the resolution of citation is voted, a formal citation is transmitted together with the committee report directly to the United States Attorney for the district in which the contempt occurred.

Appended hereto, for the information of the Court, is a table showing, for each of a large number of contempt citations voted during the period from 1940 to date, the date of citation, the number of the committee report (together with the pages of the Congressional Record where it appears if it is reprinted therein), the number of the related resolution (and where in the Congressional Record it appears), the number of columns of the Congressional Record covered by the debates, if any (and where in the Congressional Record they appear), and the page of the Congressional Record where the resolution of citation was agreed to. While the list is not exhaustive, it is believed to be fairly complete, and entirely so with respect to contempts committed in the District of Columbia. The list is believed to be very nearly complete, if not entirely so, in the case of the House Committee on Un-American Activities, with respect to which the citations listed are not limited to the District of Columbia. The subsequent histories of the citations range from refusal by the grand jury to indict to conviction and affirmance on appeal.

The Court's attention is invited to the fact that, while the custom is well established whereby the House or Senate, when Congress is in session, votes on a resolution of citation before the Speaker of the House or President of the Senate certifies the facts constituting the contempt to the appropriate United States Attorney for prosecution, this procedure appears not to be required by the literal terms of 2 U. S. C. 194. That no action by the full body of the particular House involved is necessary is suggested in *Chapman* v. *United States,* 8 App. D. C. 302, 310–311 (1896), writ of error dismissed, 164 U. S. 436. See Hitz, *Criminal Prosecution for Contempt of Congress,* 14 Fed. Bar Journ. 139, 144, n. 32. In any event, it is clear under the statute that, where the act or acts constituting the contempt are reported to the Speaker of the House or President of the Senate "when Congress is not in session," it becomes "the duty of" that officer to certify the facts constituting the contempt to the appropriate United States Attorney for prosecution without waiting for authorization for such action from the full body on the latter's reconvening. Such "recess" certifications were in fact made in three of the cases listed in the appended table (Rumely and Kamp [citations of September 26 and November 2, 1944, respectively], and Fields, *infra,* pp. 12–13).

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1957.

APPENDIX

Name	Date cited	Committee report detailing facts, with pages of Congressional Record where it appears
James H. Dolsen	3/29/40	H. Rep. 1900, 76th Cong., 3d sess. (86 C. R. 3694–5)
George Powers	4/ 2/40	" 1904, " " " " (" " 3856–7)
Philip Frankfeld	4/ 8/40	" 1936, " " " " (" " 4152–3)
Albert Blumberg	"	" 1937, " " " " (" " 4153–5)
Thomas F. P. O'Dea	"	" 1938, " " " " (" " 4155–6)
Edward K. Barsky	3/28/46	" 1829, 79th " 2d " (92 " 2744–5)
Helen R. Bryan		
Jacob Auslander		
Lyman R. Bradley		
Marjorie Chodorov		
Howard Fast		
Ernestine G. Fleischman		
Leverett Gleason		
Harry M. Justiz		
Mrs. Samuel Kamsley	4/16/46	H. Rep. 1936, 79th Cong., 2d sess. (92 C. R. 3761–2)
Ruth Leider		
James Lustig		
Manuel Magana		
Louis Miller		
Herman Shumlin		
Charlotte Stern		
Jesse Tolmach		
Mrs. Bobbie Weinstein		
Corliss G. Lamont	6/26/46	H. Rep. 2354, 79th Cong., 2d sess. (92 C. R. 7589–91)
George Marshall	8/1/46	" 2707, " " " " (" " 10565–6)
Richard Morford	8/2/46	" 2708, " " " " (" " 10566–7)
Gerhardt Eisler	2/18/47	" 43, 80th " 1st " (93 " 1127–8)
Leon Josephson	4/22/47	" 281, " " " " (" " 3804–6)
Leon Josephson (second citation).	"	" 288, " " " " (" " 3811–3)
Eugene Dennis	"	" 289, " " " " (" " 3813–4)
Albert Maltz	11/24/47	H. Rep. 1128, 80th Cong., 1st sess. (93 C. R. 10769–70)
Dalton Trumbo	"	" 1129, " " " " (" " 10779–80)
Samuel Ornitz	"	" 1130, " " " " (" " 10793–4)
Robert Adrian Scott	"	" 1131, " " " " (" " 10794–5)
John Howard Lawson	"	" 1132, " " " " (" " 10795–7)
Edward Dmytryk	"	" 1133, " " " " (" " 10797–8)
Lester Cole	"	" 1134, " " " " (" " 10798–9)
Alvah Bessie	"	" 1135, " " " " (" " 10799–800)
Herbert Biberman	"	" 1136, " " " " (" " 10801–2)
Ring Lardner, Jr	"	" 1137, " " " " (" " 10802–3)
Julius Emspak	8/10/50	" 2847, 81st " 2d " (96 " 12234–7)
Steve Nelson	"	" 2848, " " " " (" " 12249–56)
Philip Bart	8/11/50	" 2849, " " " " (" " 12256–60)
James J. Matles	"	" 2855, " " " " (" " 12284–6)
Thomas J. Fitzpatrick	"	" 2856, " " " " (" " 12286–7)
Thomas Quinn	"	" 2857, " " " " (" " 12288)
Frank Panzino	"	" 2858, " " " " (" " 12288–9)

[1] The 26 columns of debate indicated as pertaining to Maltz and the 31 columns as pertaining to Trumbo were in fact not limited to these individuals, but included within their scope the next eight persons listed (Ornitz to Lardner, inclusive). These ten persons were the so-called "Hollywood Ten."

Resolution of citation	Number of columns of Congressional Record covered by floor debates, if any	Resolution agreed to at—
H. Res. 446, 76th Cong., 3d sess. (86 C. R. 3695).....	1 (86 C. R. 3695).....	86 C. R. 3695.
" 452, " " " " (" " 3857).....	Not debated.....	" " 3857.
" 457, " " " " (" " 4153).....	" "	" " 4153.
" 458, " " " " (" " 4155).....	" "	" " 4155.
" 459, " " " " (" " 4156).....	" "	" " 4157
" 573, 79th " 2d " (92 " 2745).....	21 (92 C. R. 2745–52)	92 " 2752.
H. Res. 601, 79th Cong., 2d sess (92 C. R. 3762–3)..	30 (92 C. R. 3762–72).....	92 C. R. 3772–3.
H. Res. 678, 79th Cong., 2d sess. (92 C. R. 7591).....	22 (92 C. R. 7591–9).....	92 C. R. 7599–600.
" 749, " " " " (" " 10592, 10639, 10640)	2 (" " 10642).....	" " 10643.
" 752, " " " " (" " 10748)...	½ (" " 10748).....	" " 10748.
" 104, 80th, " 1st " (93 " 1129).....	20 (93 " 1129–37).....	93 " 1137.
" 190, " " " " (" " 3806).....	15 (" " 3806–11).....	" " 3811.
" 192, " " " " (" " 3813).....	½ (" " 3813).....	" " 3813.
" 193, " " " " (" " 3814).....	19 (" " 3814–20).....	" " 3820.
H. Res. 363, 80th Cong., 1st sess. (93 C. R. 10770)..	26 (93 C. R. 10769–78) [1]..	93 C. R. 10778.
" 367, " " " " (" " 10780)..	31 (" " 10780–93) [1]..	" " 10793.
" 368, " " " " (" " 10794)..	See fn. 1.....	" " 10794.
" 369, " " " " (" " 10795)..	" " ".....	" " 10795.
" 370, " " " " (" " 10797)..	" " ".....	" " 10797.
" 371, " " " " (" " 10798)..	" " ".....	" " 10798.
" 374, " " " " (" " 10799)..	" " ".....	" " 10799.
" 375, " " " " (" " 10800)..	" " ".....	" " 10800.
" 376, " " " " (" " 10802)..	" " ".....	" " 10802.
" 377, " " " " (" " 10803)..	" " ".....	" " 10803.
" 749, 81st " 2d " (96 " 12237)..	21 (96 C. R. 12237–47) [2]..	96 " 12247.
" 750, " " " " (" " 12256)..	See fn. 2.....	" " 12256.
" 751, " " " " (" " 12260)..	1 (96 C. R. 12260);[3] see also fn. 2.	" " 12284.
" 752, " " " " (" " 12286)..	See fn. 2.....	" " 12286.
" 753, " " " " (" " 12287)..	" " ".....	" " 12287.
" 754, " " " " (" " 12288)..	" " ".....	" " 12288.
" 755, " " " " (" " 12289–90).	" " ".....	" " 12290.

[1] The "Emspak" debates were not limited to Emspak, but pertained generally also to the next 55 persons listed (Nelson to Branca, inclusive), whose cases were taken up successively immediately following that of Emspak. Thirty-nine of these persons (Tokunaga to Yagi, inclusive) were members of the so-called "Hawaiian" group—union members and officials from Hawaii.

[2] Remarks, though made in connection with the Bart resolution, referred generally to all 56 of the cases referred to in fn. 2, *supra*.

Name	Date cited	Committee report detailing facts, with pages of Congressional Record where it appears
Ralph Tokunaga	8/11/50	H. Rep. 2859, 81st Cong., 2d sess (96 C. R. 12290-6)
Charles Fujimoto	"	2860, " " " " (" " 12297-302)
Dwight James Freeman	"	2861, " " " " (" " 12303-9)
Esther Bristow	"	2862, " " " " (" " 12309-10)
Rachel Saiki	"	2863, " " " " (" " 12311-2)
John Reinecke	"	2864, " " " " (" " 12312-4)
Ernest Arena	"	2865, " " " " (" " 12314-5)
Koichi Imori	"	2866, " " " " (" " 12315-6)
Denichi Kimoto	"	2867, " " " " (" " 12317-20)
Pearl Freeman	"	2868, " " " " (" " 12320-2)
Marshall McEuen	"	2869, " " " " (" " 12322-4)
Ruth Ozaki	"	2870, " " " " (" " 12324-5)
Stephen Murin	"	2871, " " " " (" " 12325-7)
Jack Hall	"	2872, " " " " (" " 12327-8)
Frank Silva	"	2873, " " " " (" " 12328-30)
Jack Kawano	"	2874, " " " " (" " 12330-1)
John Akana	"	2875, " " " " (" " 12331-2)
Yukio Abe	"	2876, " " " " (" " 12332-3)
Yasuki Arakaki	"	2877, " " " " (" " 12333-4)
Edward Hong	"	2878, " " " " (" " 12334-5)
Kameo Ichimura	"	2879, " " " " (" " 12335-6)
Douglas Inouye	"	2880, " " " " (" " 12336-7)
Levi Kealoha	"	2881, " " " " (" " 12337-8)
Adele Kensinger	"	2882, " " " " (" " 12338-9)
Benjamin Kaahawinui	"	2883, " " " " (" " 12339-40)
Frank Kalua	"	2884, " " " " (" " 12340-1)
Yoshita Marumo	"	2885, " " " " (" " 12341-2)
Robert Murasaki	"	2886, " " " " (" " 12342-3)
Robert McElrath	"	2887, " " " " (" " 12343-4)
Julian Napuunoa	"	2888, " " " " (" " 12345-6)
Castner Tadashi Ogawa	"	2889, " " " " (" " (12346-7)
Hideo Okada	"	2890, " " " " (" " (12347-8)
Wilfred Oka	"	2891, " " " " (" " 12348-50)
Jeanette Nakama Rohrbough	"	2892, " " " " (" " 12350-1)
Mitsuo Shimizu	"	2893, " " " " (" " 12351-2)
Frank Takahashi	"	2894, " " " " (" " 12352-3)
Shigeo Takemoto	"	2895, " " " " (" " 12353-4)
Ralph Vossbrink	"	2896, " " " " (" " 12354-6)
Thomas Yagi	"	2897, " " " " (" " 12356-7)
Giovanni Rossi Lomanitz	"	2898, " " " " (" " 12357-60)
David Joseph Bohm	"	2899, " " " " (" " 12360-2)
Irving David Fox	"	2900, " " " " (" " 12363-5)
Clarence Hiskey	"	2901, " " " " (" " 12365-7)
Frank Hashmall	"	2902, " " " " (" " 12368-9)
Talmadge Raley	"	2903, " " " " (" " 12369-71)
Esther Tice	"	2904, " " " " (" " 12371-2)
Marcel Scherer	"	2905, " " " " (" " 12373-7)
Louise Berman	"	2906, " " " " (" " 12377-81)

[4] Remarks, though made in connection with the Tokunaga resolution, referred generally to all 56 of the cases referred to in fn. 2, *supra*.

[5] Remarks, though made in connection with the Fujimoto resolution, had general reference to the "Hawaiian" cases referred to in fn. 2, *supra*.

Un-American Activities—Continued

Resolution of citation	Number of columns of Congressional Record covered by floor debates, if any	Resolution agreed to at—
H. Res. 756, 81st Cong., 2d sess. (96 C. R. 12296)	2 (96 C. R. 12296-7); [4] see also fn. 2.	96 C. R. 12297.
" 757, " " " " (" " 12302)	3 (96 C. R. 12302-3); [4] see also fn. 2.	" " 12303.
" 758, " " " " (" " 12309)	See fn. 2	" " 12309.
" 759, " " " " (" " 12311)	" " "	" " 12311.
" 760, " " " " (" " 12312)	" " "	" " 12312.
" 761, " " " " (" " 12314)	" " "	" " 12314.
" 762, " " " " (" " 12315)	" " "	" " 12315.
" 763, " " " " (" " 12317)	" " "	" " 12317.
" 764, " " " " (" " 12320)	" " "	" " 12320.
" 765, " " " " (" " 12322)	" " "	" " 12322.
" 766, " " " " (" " 12324)	" " "	" " 12324.
" 767, " " " " (" " 12325)	" " "	" " 12325.
" 768, " " " " (" " 12327)	" " "	" " 12327.
" 769, " " " " (" " 12328)	" " "	" " 12328.
" 770, " " " " (" " 12330)	" " "	" " 12330.
" 771, " " " " (" " 12331)	" " "	" " 12331.
" 772, " " " " (" " 12332)	" " "	" " 12332.
" 773, " " " " (" " 12333)	" " "	" " 12333.
" 774, " " " " (" " 12334)	" " "	" " 12334.
" 775, " " " " (" " 12335)	" " "	" " 12335.
" 776, " " " " (" " 12336)	" " "	" " 12336.
" 777, " " " " (" " 12337)	" " "	" " 12337.
" 778, " " " " (" " 12338)	" " "	" " 12338.
" 779, " " " " (" " 12339)	" " "	" " 12339.
" 780, " " " " (" " 12340)	" " "	" " 12340.
" 781, " " " " (" " 12341)	" " "	" " 12341.
" 782, " " " " (" " 12342)	" " "	" " 12342.
" 783, " " " " (" " 12343)	" " "	" " 12343.
" 784, " " " " (" " 12344)	" " "	" " 12344.
" 785, " " " " (" " 12346)	" " "	" " 12346.
" 786, " " " " (" " 12347)	" " "	" " 12347.
" 787, " " " " (" " 12348)	" " "	" " 12348.
" 788, " " " " (" " 12350)	" " "	" " 12350.
" 789, " " " " (" " 12351)	" " "	" " 12351.
" 790, " " " " (" " 12352)	" " "	" " 12352.
" 791, " " " " (" " 12353)	" " "	" " 12353.
" 792, " " " " (" " 12354)	" " "	" " 12354.
" 793, " " " " (" " 12356)	" " "	" " 12356.
" 794, " " " " (" " 12357)	" " "	" " 12357.
" 795, " " " " (" " 12360)	" " "	" " 12360.
" 796, " " " " (" " 12363)	2 (96 C. R. 12363), [4] see also fn. 2.	" " 12363.
" 797, " " " " (" " 12365)	See fn. 2	" " 12365.
" 798, " " " " (" " 12367-8)	" " "	" " 12368.
" 799, " " " " (" " 12369)	" " "	" " 12369.
" 800, " " " " (" " 12371)	" " "	" " 12371.
" 801, " " " " (" " 12373)	" " "	" " 12373.
" 802, " " " " (" " 12377)	" " "	" " 12377.
" 803, " " " " (" " 12381)	" " "	" " 12381.

[4] Remarks, though made in connection with the Bohm resolution, referred generally to all 56 of the cases referred to in fn. 2, *supra*.

House Committee on Un-American Activities—Continued

Name	Date cited	Committee report detailing facts, with pages of Congressional Record where it appears	Resolution of citation	Number of columns of Congressional Record covered by floor debates, if any	Resolution agreed to at—
Pasquale Leonard James Branca.	8/11/50	H. Rep. 2907, 81st Cong., 2d sess. (96 C. R. 12381-2)	H. Res. 804, 81st Cong., 2d sess. (96 C. R. 12382)	2 (96 C. R. 12382-3);[7] see also fn. 2.	96 C. R. 12383.
Sidney Buchman	2/5/52	" 1293, 82d " " " (98 " 826-9)	" 517, 82d " " " (98 " 829)	8 (98 C. R. 829-32)	98 " 832.
Arthur McPhaul	6/30/52	" 2353, " " " " (" " 8625-8)	" 717, " " " " (" " 8628)	4 (" " 8628, 8631-2)	" " 8633-4.
Saul Grossman	"	" 2354, " " " " (" " 8634-7)	" 718, " " " " (" " 8637)	2 (" " 8637)	" " 8637-8.
Bernhard Deutch	5/11/54	" 1578, 83d " " " (100 " 6375-7)	" 533, 83d " " " (100 " 6377)	11 (100 " 6377-81)[8]	100 " 6381-2.
John T. Watkins	"	" 1579, " " " " (" " 6382-5)	" 534, " " " " (" " 6385)	1 (100 " 6385-6);[9] see also fn. 8.	" " 6386.
Wilbur Lee Mahaney, Jr.	"	" 1580, " " " " (" " 6386-9)	" 535, " " " " (" " 6389)	See fn. 8	" " 6389.
Goldie E. Watson	"	" 1581, " " " " (" " 6389-91)	" 536, " " " " (" " 6391)	" " "	" " 6391.
Lawrence Baker Arguimbau	"	" 1582, " " " " (" " 6391-3)	" 537, " " " " (" " 6393)	" " "	" " 6393.
Marcus Singer	"	" 1583, " " " " (" " 6393-7)	" 538, " " " " (" " 6397)	" " "	" " 6397.
Ole Fagerhaugh	"	" 1584, " " " " (" " 6397-9)	" 539, " " " " (" " 6399)	" " "	" " 6399.
Barrows Dunham	"	" 1585, " " " " (" " 6399-400)	" 540, " " " " (" " 6400)	" " "	" " 6400.
Francis X. T. Crowley[10]	"	" 1586, " " " " (" " 6400-1)	" 541, " " " " (" " 6401)	" " "	" " 6401.
Bolza Baxter	7/23/54	" 2455, " " " " (" " 11598-600)	" 664, " " " " (" " 11601)	3 (100 C. R. 11600-1)[11]	" " 11602.
Horace Chandler Davis	"	" 2456, " " " " (" " 11602-8)	" 665, " " " " (" " 11608)	See fn. 11	" " 11609.
Lloyd Barenblatt	"	" 2457, " " " " (" " 11609-13)	" 666, " " " " (" " 11613)	" " "	" " 11613.
Richard E. Adams	"	" 2458, " " " " (" " 11613-6)	" 667, " " " " (" " 11616-7)	" " "	" " 11617.
George Tony Starkovich	"	" 2459, " " " " (" " 11617-22)	" 668, " " " " (" " 11622)	" " "	" " 11623.
Thomas G. Moore	"	" 2460, " " " " (" " 11623-5)	" 669, " " " " (" " 11625)	" " "	" " 11625.
John Rogers MacKenzie	"	" 2461, " " " " (" " 11625-6)	" 670, " " " " (" " 11626)	" " "	" " 11626.
Donald M. Wollam	"	" 2462, " " " " (" " 11626-8)	" 671, " " " " (" " 11628)	" " "	" " 11628.
Herbert Simpson	"	" 2463, " " 2d " (100 " 11628-30)	" 672, 83d " " " (" " 11630)	" " "	" " 11630.
Millie Markison	"	" 2464, " " " " (" " 11630-3)	" 673, " " " " (" " 11633)	" " "	" " 11633.
Benjamin F. Kocel	"	" 2465, " " " " (" " 11633-5)	" 674, " " " " (" " 11635)	" " "	" " 11635.
Paul Ross Baker	"	" 2466, " " " " (" " 11635-7)	" 675, " " " " (" " 11637)	" " "	" " 11637.
Curtis Davis	"	" 2467, " " " " (" " 11637-8)	" 676, " " " " (" " 11638)	" " "	" " 11639.
Evelyn Gladstone	"	" 2468, " " " " (" " 11639-40)	" 677, " " " " (" " 11640)	" " "	" " 11640.
Marvin Engel	"	" 2469, " " " " (" " 11641-5)	" 678, " " " " (" " 11645)	" " "	" " 11645.
Martin Trachtenberg	"	" 2470, " " " " (" " 11645-7)	" 679, " " " " (" " 11647)	" " "	" " 11647.
Carl Harvey Jackins	"	" 2471, " " " " (" " 11647-50)	" 680, " " " " (" " 11650)	" " "	" " 11650.
John Thomas Gojack	7/26/55	" 1406, 84th " 1st " (101 " 11515-21)	" 315, 84th " 1st " (101 " 11521)	Not debated	101 " 11521.
Anne Yasgur Kling	7/25/56	" 2915, " " 2d " (102 " 13166-7)[12]	" 631, " " 2d " (102 " 13173)	2 (102 C. R. 13173)	102 " 13174.
John W. Simpson	"	" 2916, " " " " (" " 13174-6)	" 632, " " " " (" " 13176)	½ (" " 13176-7)	" " 13176.
William E. Davis	"	" 2917, " " " " (" " 13177-8)	" 633, " " " " (" " 13178)	½ (" " 13178)	" " 13179.
George Tyne	"	" 2918, " " " " (" " 13179-82)	" 634, " " " " (" " 13182)	½ (" " 13182)	" " 13182.
Elliott Sullivan	"	" 2919, " " " " (" " 13182-6)	" 635, " " " " (" " 13186)	½ (" " 13186-7)	" " 13187.
Peter Seeger	"	" 2920, " " " " (" " 13187-91)	" 636, " " " " (" " 13191)	½ (" " 13191)	" " 13191.
Otto Nathan	"	" 2921, " " " " (" " 13191-4)	" 637, " " " " (" " 13194)	1 (" " 13194)	" " 13194.
Arthur Miller	"	" 2922, " " " " (" " 13194-205)	" 638, " " " " (" " 13205)	11 (" " 13205-12)	" " 13212.

[7] Remarks, though made in connection with the Branca resolution, referred generally to all 56 of the cases referred to in fn. 2, *supra*.

[8] The eleven columns of debate indicated as pertaining to Deutch also dealt with the next eight persons listed (Watkins to Crowley, inclusive).

[9] Remarks, though made in connection with the Watkins resolution, referred generally to all nine of the cases referred to in fn. 8, *supra*.

[10] Subsequently, Crowley voluntarily reappeared before the Committee and answered all questions. Accordingly, on July 23, 1954, the House, at the request of the Committee, passed a resolution (H. Res. 681, 83d Cong., 2d sess., set forth at 100 Cong. Rec. 11650) directing the Speaker to "certify the report of the Committee [H. Rep. 2472, 83d Cong., 2d sess., also set forth at 100 Cong. Rec. 11650] * * * concerning the action of Francis X. T. Crowley in purging himself of contempt of the House of Representatives" to the United States Attorney for the District of Columbia "to the end that legal proceedings based upon the matter certified by the Speaker pursuant to H. Res. 541, 83d Congress, second session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law." See 100 Cong. Rec. 11650-2.

[11] The three columns of debate indicated as pertaining to Baxter also were concerned with the next 16 persons listed (Davis to Jackins, inclusive).

[12] Page references to 102 C. R. (Cong. Rec.) here and immediately following are to the daily pagination.

House Select Committee

Name	Date cited	Committee report detailing facts, with pages of Congressional Record where it appears
Edward A. Rumely	8/30/50	H. Rep. 3024, 81st Cong., 2d sess. (96 C. R. 13873-81)
William L. Patterson	"	" 3025, " " " " (" " 13894-7)
Joseph P. Kamp	8/31/50	" 3033, " " " " (" " 13994-5)

House Special Committee to

Edward A. Rumely	9/26/44	See fn. 13
Joseph P. Kamp	11/2/44	" " "

House Committee

Henry W. Grunewald	4/ 9/52	H. Rep. 1748, 82d Cong., 2d sess. (98 C. R. 3756-73)

House Select Committee to Investigate

Benjamin F. Fields	9/ 6/46	See fn. 14

Senate Special Committee to Investigate

Harry Russell	9/23/50	S. Rep. 2580, 81st Cong., 2d sess. (not reprinted)
Joseph Dcto	1/23/51	" 25, 82d " 1st " (" ")
Anthony J. Accardo	"	" 26, " " " " (" ")
James Lynch	"	" 27, " " " " (" ")
Arthur Longano	"	" 28, " " " " (" ")
Salvatore Moretti	"	" 29, " " " " (" ")
Walter M. Pechart	"	" 30, " " " " (" ")
Pat Manno, alias Patrick J. Manning.	"	" 31, " " " " (" ")
Jack Dragna	"	" 32, " " " " (" ")
Jacob Guzik	3/30/51	" 198, " " " " (" ")
John Doyle	"	" 203, " " " " (" ")
George L. Bowers	"	" 204, " " " " (" ")
William G. O'Brien	"	" 205, " " " " (" ")
John Croft	"	" 207, " " " " (" ")
Morris Kleinman	"	" 208, " " " " (" ")
Louis Rothkopf	"	" 209, " " " " (" ")
George S. May	6/25/51	" 472, " " " " (" ")
Rocco Fischetti	"	" 473, " " " " (" ")

[13] Rumely's and Kamp's acts of contumacy were certified to the United States Attorney for the District of Columbia by the Speaker during a recess of Congress, pursuant to "statements of facts" with respect thereto, filed with the Speaker by the Committee; the Speaker reported his action to the House on November 14, 1944 (90 Cong. Rec. 8163). This procedure is authorized by (and in fact made mandatory under) 2 U. S. C. 194.

[14] Fields' act of contumacy was certified to the United States Attorney for the District of Columbia by the Speaker during a recess of Congress, pursuant to a "statement of facts" with respect thereto, filed with the Speaker by the Committee; the Speaker reported his action to the House on January 3, 1947 (93 Cong. Rec. 39-40). As noted in the preceding footnote, this procedure is prescribed by 2 U. S. C. 194.

on Lobbying Activities

Resolution of citation	Number of columns of Congressional Record covered by floor debates, if any	Resolution agreed to at—
H. Res. 834, 81st Cong., 2d sess. (96 C. R. 13881)	33 (96 C. R. 13881-93)	96 C. R. 13893.
" 835, " " " " (" " 13897)	17 (" " 13897-903)	" " 13903.
" 836, " " " " (" " 13995)	26 (" " 13995-4004)	" " 14005.

Investigate Campaign Expenditures

See fn. 13	See fn. 13	Cited in recess.[13]
" " "	" "	Cited in recess.[13]

on Ways and Means

H. Res. 602, 82d Cong., 2d sess. (98 C. R. 3853)	3 (98 C. R. 3853-4)	98 C. R. 3854-5.

the Disposition of Surplus Property

See fn. 14	See fn. 14	Cited in recess.[14]

Organized Crime in Interstate Commerce

S. Res. 358, 81st Cong., 2d sess. (96 C. R. 15727)	Not debated	96 C. R. 15727.
" 43, 82d " 1st " (97 " 573)	40 (97 C. R. 499-506, 573-579)[15]	97 " 579
" 44, " " " " (" " 579)	See fn. 15	" " "
" 45, " " " " (" " ")	" " "	" " "
" 46, " " " " (" " ")	" " "	" " "
" 47, " " " " (" " ")	" " "	" " "
" 48, " " " " (" " ")	" " "	" " "
" 49, " " " " (" " ")	" " "	" " "
" 50, " " " " (" " ")	" " "	" " "
" 109, " " " " (" " 3038)	Not debated	" " 3038
" 114, " " " " (" " 3039)	" "	" " 3039
" 115, " " " " (" " ")	" "	" " "
" 116, " " " " (" " ")	" "	" " "
" 118, " " " " (" " ")	" "	" " "
" 119, " " " " (" " 3040)	" " [16]	" " 3040.
" 120, " " " " (" " ")	" " [16]	" " "
" 159, " " " " (" " 7014)	" "	" " 7014.
" 160, " " " " (" " ")	" "	" " "

[15] Nineteen of these columns (97 Cong. Rec. 573-9) were also applicable to the next seven persons listed (Accardo to Dragna, inclusive).

[16] The Kleinman and Rothkopf citations were subsequently reconsidered (97 Cong. Rec. 3113, 9703, 9715-6). On reconsideration there were some 89 columns of debate (97 *id.* 9137-9, 9765-73, 9773-90, 9791-802), following which, on August 10, 1951, the resolutions of citation were again agreed to (97 *id.* 9802-3).

Senate Special Committee to Investigate

Name	Date cited	Committee report detailing facts, with pages of Congressional Record where it appears
Murray L. Humphreys	6/25/51	S. Rep. 474, 82d Cong., 1st sess. (not reprinted)
Julius Fink	7/24/51	" 563, " " " " (" ")
Abraham Minker	"	" 564, " " " " (" ")
Isadore Minker	"	" 565, " " " " (" ")
Alex Fudeman	"	" 566, " " " " (" ")
Patrick Joseph Size	9/18/51	" 778, " " " " (" ")
Joseph C. Baldassari	"	" 779, " " " " (" ")
Joseph Scalleat	"	" 780, " " " " (" ")

Senate Subcommittee on Internal Security

Mary Jane Keeney	3/17/52	S. Rep. 1213, 82d Cong., 2d sess. (not reprinted)
Abram Flaxer	3/19/52	" 1336, " " " " (" ")
Joseph Starobin	7/27/55	" 823, 84th " 1st " (" ")
Harry Sacher	7/28/55	" 824, " " " " (" ")
Harvey M. Matusow	3/29/56	" 825, " " " " (" ")
Mary Knowles	4/30/56	" 1765, " " 2d " (" ")
Herman Liveright	"	" 1766, " " " " (" ")
Robert Shelton	5/10/56	" 1934, " " " " (" ")
Seymour Peck	"	" 1935, " " " " (" ")
Pauline Feuer	"	" 1936, " " " " (" ")
Alden Whitman	"	" 1937, " " " " (" ")
William A. Price	"	" 1938, " " " " (" ")

Senate Permanent Subcommittee on Investigations

Russell W. Duke	5/6/53	S. Rep. 143, 83d Cong., 1st sess. (not reprinted)
Harvey O'Connor	7/23/53	" 630, " " " " (99 C. R. 9621-2)
Wendell H. Furry	8/11/54	" 2039, " " 2d " (not reprinted)
Leon J. Kamin	"	" 2040, " " " " (" ")
Albert Shadowitz	8/16/54	" 1812, " " " " (" ")
Corliss Lamont	"	" 1813, " " " " (" ")
Abraham Unger	"	" 1814, " " " " (" ")
Diantha G. Hoag	2/4/55	" 7, 84th " 1st " (" ")

Senate Committee on

Frederick V. Field	9/22/50	S. Rep. 2568, 81st Cong., 2d sess. (not reprinted)
Earl Russell Browder	"	" 2569, " " " " (" ")
Philip Jacob Jaffe	"	" 2570, " " " " (" ")

[17] Includes debates on S. Res. 294, a duplicate, identically worded resolution (see 98 Cong. Rec. 2392, 2500).

Organized Crime in Interstate Commerce—Continued

Resolution of citation	Number of columns of Congressional Record covered by floor debates, if any	Resolution agreed to at—
S. Res. 161, 82d Cong., 1st sess. (97 C. R. 7014)	Not debated	97 C. R. 7014.
" 181, " " " " (" " 8702)	" "	" " 8702.
" 182, " " " " (" " ")	" "	" " "
" 183, " " " " (" " ")	" "	" " "
" 184, " " " " (" " ")	" "	" " "
" 212, " " " " (" " 11490)	" "	" " 12407.
" 213, " " " " (" " ")	" "	" " "
" 214, " " " " (" " ")	" "	" " "

of the Committee on the Judiciary

S. Res. 283, 82d Cong., 2d sess. (98 C. R. 1287)	3 (98 C. R. 2363–4)	98 C. R. 2364.
" 295, " " " " (" " 2440)	9 (" " 2392–8, 2499–500) [17]	" " 2500.
" 129, 84th " 1st " (101 " 10276)	Not debated	101 " 10678.
" 130, " " " " (" " 10277)	8 (101 C. R. 11678–9, 11811–3)	" " 11813.
" 131, " " " " (" " 10277)	1 (102 " 5202–3) [18]	102 " 5203.
" 240, " " 2d " (102 " 5774)	½ (" " 6516)	" " 6516.
" 241, " " " " (" " ")	½ (" " ")	" " "
" 253, " " " " (" " 6491)	½ (" " 7073)	" " 7073.
" 254, " " " " (" " ")	½ (" " ")	" " "
" 255, " " " " (" " ")	½ (" " ")	" " "
" 256, " " " " (" " ")	½ (" " 7074)	" " 7074.
" 257, " " " " (" " ")	½ (" " ")	" " "

of the Committee on Government Operations

S. Res. 103, 83d Cong., 1st sess. (99 C. R. 3098)	1 (99 C. R. 4600)	99 C. R. 4603.
" 147, " " " " (" " 9183)	Not debated	" " 9622.
" 306, " " 2d " (100 " 12933)	1 (100 C. R. 14043–4)	100 " 14044.
" 307, " " " " (" " ")	1 (" " 14044)	" " "
" 280, " " " " (" " 10668)	6 (" " 14092, 14555–6).	" " 14556.
" 281, " " " " (" " ")	51 (100 C. R. 14093–4, 14581–97).	" " 14597.
" 282, " " " " (" " ")	9 (100 C. R. 14092–3, 14556–9).	" " 14559.
" 31, 84th " 1st " (101 " 445)	Not debated	101 " 1159.

Foreign Relations

S. Res. 349, 81st Cong., 2d sess. (96 C. R. 14639)	Not debated	96 C. R. 15534.
" 350, " " " " (" " ")	" "	" " "
" 351, " " " " (" " ")	" "	" " "

[18] Page references to 102 C. R. (Cong. Rec.) here and immediately following are to the daily pagination.

Senate Committee on the

Name	Date cited	Committee report detailing facts, with pages of Congressional Record where it appears
Roger Simkins	2/25/52	S. Rep. 1211, 82d Cong., 2d sess. (not reprinted)
Emmitt Warring	"	" 1212, " " " " (" ")

Senate Investigative Subcommittee of the

Timothy J. O'Mara	7/15/53	S. Rep. 519, 83d Cong., 1st sess. (not reprinted)

Senate Subcommittee on Welfare and Pension Funds

Eugene C. James	7/19/55	S. Rep. 872, 84th Cong., 1st sess. (101 C. R. 10706–7)

District of Columbia

Resolution of citation	Number of columns of Congressional Record covered by floor debates, if any	Resolution agreed to at—
S. Res. 281, 82d Cong., 2d sess. (98 C. R. 1227).....	Not debated.....	98 C. R. 1311.
" 282, " " " " (" " ").....	" "	" " "

Committee on Interstate and Foreign Commerce

S. Res. 139, 83d Cong., 1st sess. (99 C. R. 8422).....	1 (99 C. R. 8883-4).....	99 C. R. 8884.

of the Committee on Labor and Public Welfare

S. Res. 135, 84th Cong., 1st sess. (101 C. R. 10496)..	Not debated.....	101 C. R. 10916.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR ROBERT M. METCALF, *AMICUS CURIAE*

TELFORD TAYLOR
Counsel for Robert M. Metcalf, Amicus Curiae
400 Madison Avenue
New York 17, N. Y.

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IN THE

Supreme Court of the United States

October Term, 1956

JOHN T. WATKINS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 261

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR ROBERT M. METCALF, *AMICUS CURIAE*

Interest of *Amicus Curiae*

Robert M. Metcalf, appearing as *amicus curiae* herein with the consent of both petitioner and respondent, is the defendant in *United States* v. *Metcalf,* Case No. 3184 in the United States District Court for the Southern District of Ohio, Western Division. In that proceeding, Metcalf has been indicted under legal and factual circumstances comparable to those involved in the instant case. Accordingly, Metcalf has a direct and substantial interest in this Court's review and disposition of the questions presented by the petition for a writ of certiorari in the instant case, and joins in petitioner's prayer that it be granted.

Statement

Metcalf is an artist in stained glass and a professor of art at Antioch College, Yellow Springs, Ohio. On September 15, 1954, he appeared as a witness, under subpoena, before a subcommittee of the Committee on Un-American Activities of the House of Representatives.[1] As the indictment recites, Metcalf "testified that in the latter part of 1945 or the early part of 1946 when he was a professor at Antioch College, he became involved in a Marxist discussion group and admitted that there were members of the faculty of Antioch College in this group".[2] Metcalf was then asked to tell the subcommittee the names of the Antioch faculty members and students, and of other individuals, who had belonged to the "Marxist discussion group." He declined to give the names, stating his grounds of refusal in a letter which was made part of the record of the hearing[3], and which concluded as follows:

---

[1]His testimony is printed in *Investigation of Communist Activities in the Dayton, Ohio Area—Part 3*, Hearing before the Committee on Un-American Activities (83rd Cong., 2d Sess.), September 15, 1954, pp. 6978-83.

[2]Metcalf's description of the group was as follows (*Investigation of Communist Activities, supra*, at p. 6979):

> "In the latter part of 1945, or the early part of 1946, I became involved with a small group. As I understood, it would be a Marxist discussion group and not an organized part of the Communist Party. Some time later, and this information didn't come through to me personally, but there was an effort to make or to suggest that this group affiliate with the student group. I did not approve of this at all. I never do approve of indoctrination of any kind. I would have nothing to do with it.
>
> "I said that I would then immediately withdraw from any activity in such a thing, and there was one Marxist meeting held at which the whole business was disbanded, largely because, I think, all of the people felt that we were not involved with what we had started with at all. These people I never heard make any subversive remarks, and as far as I know personally those people got out of that organization at the same time that I did."

[3]*Investigation of Communist Activities, supra*, pp. 6980-81.

> "The basis and scope, if any, of your committee's authority to investigate educational institutions, and individuals connected therewith, presents a fundamental and far-reaching legal question. I have no desire to restrict my testimony before your committee for the purpose of precipitating a judicial test. Believing as I do, however, that the inquiry is beyond the powers of your committee, and, in any event, restricted by the Bill of Rights, I shall be constrained to decline to reply to unauthorized questions, in case answering might cause other individuals unnecessary harm or embarrassment, or would otherwise cause me to lose self-respect."

On February 24, 1955 Metcalf was indicted in the Federal District Court at Dayton, Ohio, under the statute (2 U. S. C. 192) making it a misdemeanor for a witness before a duly empowered Congressional committee to refuse to answer pertinent questions. On October 3rd, 1955, the District Court (Cecil, D. J.), on motion, dismissed the indictment as "insufficient by reason of the fact that it does not allege all of the essential elements of the crime."[4] On July 10, 1956 Metcalf was again charged, under the revised indictment which is presently pending in the same court.

In the instant case, petitioner has been convicted under the same statute under which Metcalf is indicted, the charge is based in both cases on appearances before subcommittees of the same Congressional investigating committee acting under the same authority, and the questions which petitioner and Metcalf refused to answer are comparable, though not identical. All but one[5] of the issues presented in the petition

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[4] *United States* v. *Metcalf*, unreported, Crim. No. 3052, S. D. Ohio W. D. *Cf. United States* v. *Lamont*, 18 F. R. D. 27 (S. D. N. Y. 1955); *United States* v. *Deutsch*, decided July 26, 1956 (D. C. Cir.).

[5] The fifth question stated in the petition, relating to the presence of government employees on the Grand Jury, will probably not arise in Metcalf's case.

are also raised by the proceeding against Metcalf, and its outcome may therefore be governed or affected by this Court's disposition of any of these questions, should it determine to review the judgment below in the instant case.

Reasons for Granting the Writ

The cases of Watkins and Metcalf are two of many presently pending in the courts, in which witnesses before legislative investigating committees have declined to answer questions, not under claim of privilege, but on the ground that the committees lacked authority to require that the questions be answered. Most of these cases involve committees which are active in the general field of government security and individual loyalty, and witnesses who have declined to answer questions about the political associations, activities, or opinions of themselves or other persons.

Some years past, this Court denied *certiorari* in three cases in which witnesses before the Committee on Un-American Activities had been convicted for refusal to answer questions or produce documents.[6] More recently the Court granted *certiorari* in a case arising from a witness' challenge to the power of a House committee investigating lobbying, and reversed the conviction on the ground that the questions were unauthorized. *United States* v. *Rumely*, 345 U. S. 41 (1953).

During these years, two Senate subcommittees have entered the loyalty-security field and conducted extensive hearings,[7] and state investigative agencies, both legislative

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[6] *United States* v. *Josephson*, 165 F. 2d 82 (C. A. 2, 1948), *cert. denied* 333 U. S. 838; *Barsky* v. *United States* (D. C. Cir. 1948), *cert. denied* 334 U. S. 843; *Lawson* v. *United States*, 176 F. 2d 49 (D. C. Cir. 1949), *cert. denied* 339 U. S. 934.

[7] The Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, and the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Senate Committee on the Judiciary.

and executive, have concerned themselves with the same general subject matter.[8] The combined activities of the several federal and state investigative committees have resulted in numerous episodes in which individuals called as witnesses have contested the committees' authority to question them on political or "loyalty" matters, and have consequently been proceeded against criminally or in contempt. Most of these cases are presently pending in the lower federal courts under the statute involved in the present case.[9]

There can be no question of the importance of the constitutional and other legal issues raised in cases of this type, as this Court has made abundantly clear in two recent decisions. See *United States* v. *Rumely*, 345 U. S. 41, 44; *Quinn* v. *United States*, 349 U. S. 155, 160-61. Nor, in view of the far-flung activities of legislative committees and the numerous cases they are precipitating, can there be any doubt of the current and sharp pressure of these issues on the legal and political fabric of the nation. The instant case appears to present these issues fairly and squarely, and plainly to warrant review by this Court.

By no means is it suggested that the instant case necessarily calls for disposition of the constitutional issues

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[8]See Gellhorn, *The States and Subversion* (1952); Barrett, *The Tenney Committee* (1951); Chamberlain, *Loyalty and Legislative Action: A Survey of Activity in the New York Legislature, 1919-1949* (1951).

[9]*E.g.*, *United States* v. *Deutsch*, decided July 26, 1956 (D. C. Cir.); *United States* v. *Gojack*, pending in the Court of Appeals for the District of Columbia, No. 13464; *United States* v. *O'Connor*, 135 F. Supp. 590 (D. D. C. 1955), pending in the Court of Appeals, No. 13049; *United States* v. *Lamont*, No. C 145-216 (S. D. N. Y.) and companion cases *Unger* (C 145-217) and *Shadowitz* (C 145-218). There are numerous comparable cases in the federal courts, and one from a state court is now pending here on appeal. *Sweezy* v. *New Hampshire*, No. 175 October Term, 1955. There have been recent press reports of Congressional citations for contempt which will presumably lead to additional indictments on like grounds in the near future. See *The New York Times* for July 26, 1956 (a well-known playwright, a professor who is the executor of Albert Einstein's estate, three actors, and three residents of St. Louis) and for May 1, 1956 (three editorial employees of *The New York Times*, a reporter, a radio station director, and a librarian).

stressed in the petition. Indeed, as is suggested below,[10] it may well be that the Un-American Activities Committee here exceeded the authority delegated to it by Congress, and that the constitutional questions may not be reached.

This possibility, however, in no way diminishes the legal significance or practical importance of this controversy. Questions of pertinence and of the scope of committee authority inhere in most if not all of the other cases pending in the lower federal courts,[11] and their proper disposition may contribute, quite as significantly as the resolution of constitutional issues, to the integrity of the legislative process and the preservation of individual rights.

Certainly neither a decision in this nor in any other single case is likely to lay at rest the numerous and diverse issues projected by the current proliferation and expansion of the investigative process. The legitimate breadth of the legislative power of inquiry must be respected and enforced together with the rights and liberties of the individuals upon whom that power is brought to bear. But it can hardly be disputed that cases such as the instant one[12] present legal issues of balance and adjustment which urgently call for this Court's review, so that what Justice

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[10] *Infra*, pp. 7-10.

[11] See, *e.g. United States* v. *Kamin*, 136 F. Supp. 791 (D. Mass. 1956).

[12] In the *Josephson* case, *supra* note 6, the witness refused even to take the oath, so that the scope of the Committee's legitimate authority was not squarely raised. In the *Barsky* case, *supra* note 6, the comments of the Court of Appeals on the Committee's power to ask questions such as are involved in the instant case appear to have been unnecessary to a disposition of that case, which involved a subpoena for the financial records of an organization engaged in foreign propaganda. In the *Lawson* case, *supra* note 6, the petitioners took the flat position that Congress has no power whatever, under any circumstances, to inquire into political beliefs or associations. Whether or not it was factors such as these that led this Court to deny *certiorari* in those cases, in the instant case there are no such flaws in the picture presented for review.

Holmes called "the neighborhood of principles of policy"[13] may regain a measure of equanimity and harmony.

This brief *amicus* on petition for *certiorari* is not, of course, an appropriate vehicle for full analysis of the far-reaching questions which are common to the instant case and the *Metcalf* case. The petition for *certiorari* (p. 16 footnote 13) mentions most of the constitutional issues, while laying the main burden of argument on the doctrine of separation of powers and the problem of valid legislative purpose.

However, a few additional comments on the merits appear to be warranted. For, with all respect to distinguished counsel for the petitioner, it is believed that the petition's statement of the constitutional issues is confined to the factual question of "exposure", at the expense of other facets of at least equal significance. And, perhaps more important, the petition deals only sketchily with the issue which must be resolved before the constitutional questions are approached: whether or not questions such as those put to the petitioner are pertinent to the inquiry which the House of Representatives has authorized the Un-American Activities Committee to conduct.

1. *Scope of Authority Delegated to the Committee by the House, and Pertinence of the Questions Put to Petitioner.* The Legislative Reorganization Act of 1946 and House Resolution 5 (83rd Congress), in identical language, authorize the Un-American Activities Committee to investigate "the extent, character, and objects of un-American propaganda activities in the United States".[14] On the face of the matter, it is clear that the questions put to the petitioner and to Metcalf are exceedingly remote from the pre-

[13]See *Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355 (1908).

[14]The full text of the authorization is given in the petition at p. 4

scribed subject matter of the investigation. As the dissenting judges below put it (Pet. 64):

> "The questions do not relate in any clear or direct way to the extent, the character, the objects, or the diffusion, of any propaganda, subversive and un-American or otherwise. The government has not shown that in asking these questions the Committee was seeking, even directly, information about the extent or character or objects or diffusion of propaganda. It has not shown that Watkins, or his union, or the persons about whom the Committee inquired, engaged in propaganda, or that the Committee sought to learn whether they did."

The petition nevertheless implies (p. 34) that the House has in fact authorized the Committee to require answers to questions of this type,[15] on the basis that the Committee "has interpreted its resolution as giving it authority to investigate un-American and subversive activities unrelated to legislation" and that Congress "has every year ratified this interpretation."[16] But of course Congress is powerless to ratify a committee's assertion of authority to conduct inquiries unrelated to legislation. The question is rather what scope of inquiry is reasonably related to the legislative purpose specified by Congress in the authorizing resolution. And it is not to be lightly assumed that the House has enlarged the specified purpose beyond its fair intendment.

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[15]Below, petitioner did not contend that the Committee lacked authority from the parent body; indeed his brief in the Court of Appeals (pp. 57-58) expressly disavows such challenge. Presumably, this is why the petition (pp. 32-34) relies only reluctantly on the position taken by the dissenting judges below, and which prevailed in the majority opinion of the panel prior to the rehearing *en banc*.

[16]By reference to petitioner's brief in the Court of Appeals (pp. 57-58), it appears to be his suggestion that the House has "ratified" the Committee's conduct in that "the House has permitted the Committee to continue to operate under the same charter and thus ratified the broader construction."

merely because the House has continued the investigative authorization and appropriated funds to its support, after the Committee has asserted a wider authority than is covered by the authorizing resolution.[17]

The House has authorized this particular Committee to look into "un-American propaganda activities", and it is plain that in this case the Committee was doing nothing of the sort. It strains the strands of reasonableness past the breaking point to infer that the House meant its Committee to poke about in fields so disparate in time and subject matter from the declared object of the inquiry. The questions put to Watkins and Metcalf are much farther removed from any possible pertinency than those that were held not pertinent in *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C. 1953) and *United States* v. *Kamin*, 136 F. Supp. 791 (D. Mass. 1956). See also *United States* v. *DiCarlo*, 102 F. Supp. 597 (N. D. Ohio 1952); *In re Battelle*, 207 Cal. 227, 277 Pac. 725 (1929); *People* v. *Foster*, 236 N. Y. 610, 142 N. E. 304 (1923).

But even if some tenuous showing of pertinence be assumed as theoretically possible, the pressure of the constitutional issues raised thereby requires that the authorizing statute and resolution be not construed so broadly as to bring these questions within its scope. This Court has made it clear that the Houses of Congress must not be assumed to have authorized committees to ask questions that impinge closely on constitutional rights, unless that meaning has been made unmistakably clear: *United States* v. *Rumely*,

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[17] *Cf.* the treatment of the related though not identical question of House "ratification" of the specific questions put to the recalcitrant witness by the vote citing for contempt, in *United States* v. *Rumely*, 345 U. S. 41, 47-48. "Administrative construction" as a guide to statutory interpretation is respected only within the area of reasonable interpretation. See *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 640. Surely, any analogous doctrine of "committee construction" of its delegated powers should be at least equally limited.

345 U. S. 41 (1953); see also Judge Edgerton's opinion, dissenting in part, in *United States* v. *Lattimore*, 215 F. 2d 847, 863-69 (C. A. D. C. 1954).

The constitutional questions raised by the questions put to Watkins and Metcalf are at least as grave as, and more numerous than, those that dictated the result in the *Rumely* case. But whereas the decision in the *Rumely* case required a narrow and restrictive interpretation of the authorizing resolution which some might regard as strained, in the present case the authorizing acts must be stretched beyond their reasonable meaning to bring the questions within their scope.

The determination of this case, therefore, is governed *a fortiori* by the *Rumely* decision. The questions put to Watkins were beyond the authority delegated to the Committee, and therefore not pertinent to the inquiry that the Committee was authorized to conduct. Accordingly, the judgment below should be reversed.

2. *Constitutional Limitations on the Investigative Power of Congress.* Since the investigative power of Congress is a part of its legislative power, the former is both subject to and supported by all those provisions of the Constitution which shape the latter. This Court has recently described, in a statement both pithy and comprehensive, the several constitutional limits on the investigative power, including those that are pertinent to the instant case. *Quinn* v. *United States*, 349 U. S. 155, 160-61.

The petitioner, we submit, has demonstrated conclusively that the Committee's questions to Watkins were asked for the sole purpose of exposure, and that the Committee had no legitimate legislative purpose in view. Surely, too, it is plain that Congress possesses no such power of exposure as this Committee asserts, and that the attempted exercise of such a power has been authoritatively condemned ever since the time of John Quincy Adams (Pet. 17).

But petitioner's argument covers only a part of what is at issue here. Describing the questions put to Watkins as a "case of exposure for exposure's sake" phrases the test in subjective terms of the Committee's motive and intent. It may be helpful to view the constitutional problem also in the more objective terms of the scope and effect of the questions, in relation to the declared object of the Committee's inquiry.

If the lens is focused from this vantage point, it is easy to see why petitioner's argument, and his evidence of the Committee members' purposes, proved unconvincing to the majority of the court below. For they took the view (Pet. 43, 48) that the authority delegated to the Committee by the House extends so far as to empower the Committee to "identify" *every individual* who is or has been a member of the Communist Party or who "believes" in Communism.[18]

For reasons already given, this is an unwarrantably broad construction of the delegated power to investigate "un-American propaganda activities". For reasons shortly to be stated, it is likewise a conclusion that narrows the doctrine of separation of powers and the guarantees of the Bill of Rights to the vanishing point. However, the court below concluded otherwise on these points, and once having gone so far, it was obviously not interested in petitioner's proof, however clear, that the Committee and its members had revealed that their actual purpose was not legislative, but was directed solely to "exposure for exposure's sake."

The essential vice and fallacy of the position taken by the majority of the lower court (apart from the Procrustean extension of the House resolution) is that it totally subordinates to the legislative power the constitutional provisions that limit that power. To establish an absolute

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[18]The Supreme Court of New Hampshire appears to have taken an essentially similar view in the *Sweezy* case now pending in this Court. See the Jurisdictional Statement, pp. 45-47.

and unlimited investigative power to "identify" every individual who "believes" in Communism or any other doctrine, however noxious, is an unbalanced and indefensible conclusion, the logical implications of which are staggering.

If this Committee has the power attributed to it by the majority below to require any individual to assist it in identifying past and present Communist members and "believers," the arguably relevant breadth of questioning is enormous. *Cf. Tenney* v. *Brandhove*, 341 U. S. 367, 380 (1951). Furthermore, the Committee surely has the power to cross-examine witnesses to test the veracity, candor and completeness of their testimony. It is easy to envisage the virtually unbounded scope of arguably relevant questioning about opinions and associations that would be open to the Committee to pursue. Finally, the Committee's power under the statute (2 U. S. C. 192) is not restricted to oral testimony; it may also order the production of books and records. Under the theory of the majority below, the Committee would clearly be empowered to compel any person to produce any letters or other documents in his possession, no matter how personal in character, containing any reference to his attitude or that of anyone else toward Communism or any matter related to Communism.

No doubt the Government may reply that these things are not involved in the instant case. True enough, but it is certainly part of a wise jurisprudence to envisage the necessary consequences of a position or principle before adopting it. Whatever disposition is made of the instant case, the position taken by the lower court in this and earlier cases is insupportable, and leads inevitably to grotesque and intolerable corollaries.

In the present case this Court is confronted, and not for the first time, with a problem of balance and adjustment between on the one hand the Government's right to protect itself against violent overthrow by legislative means

reasonably adapted to that end, and on the other hand the preservation of governmental structure and the protection of individual rights in accordance with the constitutional provisions dedicated to those ends. There are several notable versions of the equation in the law books, of which the two perhaps most often invoked are Justice Holmes' "clear and present danger" test[19] and Judge Learned Hand's formulation,[20] approved by this Court in *Dennis v. United States*, 341 U. S. 494, 501. In bringing judgment to bear on such imponderables as freedom and security, even the best-phrased statements are chiefly valuable in evoking an attitude of mind conducive to a dispassionate, informed, and imaginative appraisal.

This is precisely what the majority of the court below failed to render. The gravity of the invasion of free speech wrought by questioning such as is involved in the instant case is apparent, and was clearly recognized by all members of this Court, as well as the court below in the *Rumely* case.[21] Such an invasion is not to be judicially sanctioned merely because the questions refer to Communism.

In the cases of the petitioner and Metcalf, the relation of the questions to the danger of the violent overthrow of government is exceedingly remote. The questions concern events many years past, and persons and situations far removed from the national security. That the House of Representatives needed the information called for by the questions for any legislative purpose is not seriously arguable. The proof that the Committee's real purpose was not legislative but punitive is compelling.[22] There is no reason-

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[19] *Schenck* v. *United States*, 249 U. S. 47, 52.

[20] *United States* v. *Dennis*, 183 F. 2d 201, 212 (C. A. 2).

[21] See *Rumely* v. *United States*, 197 F. 2d 166, 173-74, 176; *United States* v. *Rumely*, 345 U. S. 41, 46, 56-58.

[22] In shifting the core of the analysis from purpose and intent ("exposure") to the objective tests of scope, effect, and relation to the declared purpose of the inquiry, it is by no means intended

able relation between the questions and the inquiry into "un-American propaganda" which the Committee is empowered to conduct. The endless "identification" of individuals who may in the past have had some connection with Communism is no proper legislative function, and undermines the separation of powers. The incursion on the guarantees in the Bill of Rights is deep and dangerous, whether viewed from the right, left, or center of the political spectrum.

Other cases may well present situations in which reasonable men might differ in the course of an analysis such as the foregoing. In the instant case, the lower courts failed to make any analysis whatsoever. They simply did not undertake to search the issue in the general terms that this Court has laid down in related cases.[23] The result is a decision which ignores its own logical consequences, which disregards the facts necessary to a realistic and informed conclusion, and which must surely be reversed.

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to suggest that the evidence of the Committee's true purpose (on which petitioner chiefly relies) is irrelevant to the issue. To the contrary, it may be (as it is here) of the greatest importance in determining the value of the questions for legislative purposes, and the degree of relationship between the questions and the legitimate scope of the inquiry.

[23]In addition to the *Dennis* case, *supra*, see *Marshall* v. *Gordon*, 243 U. S. 521, 541 (1917), wherein Chief Justice White, discussing the legislative power to punish for contempt, observed that it should be exercised in accordance with the principle "the least possible power adequate to the end proposed." The language is taken from *Anderson* v. *Dunn*, 6 Wheat. 204, 230-31 (1821). *Cf. Toth* v. *Quarles*, 350 U. S. 11, 23 (1955).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

August 15, 1956.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1956

No. 261

JOHN T. WATKINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union, appearing herein with the consent of all the parties filed with the Clerk of this Court, is a nationwide non-partisan organization devoted solely to the protection and advancement of the Constitutional rights fundamental to the democratic way of life. It has no other program, either political, economic, social, or philosophical.

Amicus' primary concern with the instant case is that this Court's validation of the conviction of the petitioner would broaden the scope of permissive legislative inquiry into political belief and association by leaving undefined the First Amendment limitations thereon. Such judicial definition is necessary if we are to maintain the sanctuary

from official intrusion of rights guaranteed by the First Amendment. To limit, to diminish this vital area of privacy is to limit the use of and diminish the effect of one of the most powerful weapons in our arsenal of defense.

One of the basic safeguards against infringement of our rights is the system of checks and balances created in our branches of government. Unless the petitioner's rights are secured by judicial decision, there will result, as there has been steadily developing, an imbalance of our checks and balances by the legislative inquiry that could destroy our way of freedom.

Statement of the Case [1]

This brief is submitted in support of the petitioner herein on the single issue as to whether a legislative investigation into the nature and extent of Communist political propaganda can compel the petitioner to disclose his political associations on pain of imprisonment for refusal to do so.

Amicus recognizes that the Communist Party has a dual nature, engaging publicly in the forms of expression and association usual to political parties and organizations, but also engaging covertly in anti-democratic methods in aid of the aims of Soviet Russia. *Amicus* has recognized a similar duality, in positions it has taken in the past, with respect to various laws and governmental actions affecting totalitarian movements—Fascist and Ku Klux Klan, as well as Communist—and will continue to do so in the future. *Amicus* is concerned solely with protection of the rights of individual Communist Party members, former members, and sympathizers in the first role, because of the effect of restraints in this area on principles and practices affecting freedom of expression and association for all Americans.

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[1] The facts relied on by *amicus* are set forth in the Joint Appendix in the United States Court of Appeals for the District of Columbia submitted in *Watkins v. United States*, No. 12,797.

In this brief, we do not intend to deal with the legal issues ably and forcibly presented in the brief of the petitioner. Rather, we intend to show that the petitioner's right to remain silent under the First Amendment in the face of a legislative inquiry has been violated. In this context, we urge that the judgment below be reversed.

I

The Congressional subcommittee in seeking to compel petitioner to disclose his political associations has exceeded the bounds of permissive legislative incursion upon First Amendment rights.

A. First Amendment rights are not absolute but they should yield only to the exigencies which this Court has painstakingly delineated.

This Court has frequently passed on laws [2] enacted by Congress which have encroached on conduct protected by the First Amendment.

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[2] The law in this case is the statute authorizing conviction for contempt, 2 USC 192. This law is clearly valid on its face, but as applied to deny petitioner his rights under the First Amendment, it is unconstitutional. A law valid on its face may be applied in such a way as to render it unconstitutional. *Yick Wo* v. *Hopkins*, 118 U. S. 356.

The contempt statute would deny petitioner's rights if used to punish him for the valid exercise of his rights.

Alternatively, the law in this case is *P. L. 601, s. 121, 79th Congress, 2d Session*, authorizing the House Committee on Un-American Activities. The Committee acting pursuant to this law has abridged petitioner's First Amendment rights. Whether or not the law is otherwise constitutionally valid, here the abridgment of petitioner's rights may be considered the unwarranted intrusion into his political associations. The imprisonment for contempt is only the immediate consequence: the coercive effect of it is to cause petitioner in the future—and all other witnesses similarly situated—to make the choice between suffering the intrusion and going to prison, which is plainly Hobson's choice.

It is well established that the right of free speech is not absolute. *Schenck* v. *United States*, 249 U. S. 47. Speech which incites to riot may be prosecuted. *Gitlow* v. *New York*, 268 U. S. 652; *Whitney* v. *California*, 274 U. S. 357.

Conversely, blanket prohibitions of speech or assembly are repugnant to the First Amendment. *Lovell* v. *Griffin*, 303 U. S. 444.

The Court has established a standard essentially derived from Mr. Justice Holmes' opinion in *Schenck* v. *United States, supra*, which required a clear and present danger to national security resulting from the conduct proscribed in order to justify a Congressional limitation upon free speech and assembly.

When Congress found it necessary to cope with political conspiracy tending toward overthrow of the government, the Court, reviewing 18 U. S. C., §§ 371, 2385, the "Smith" Act, modified the clear and present danger standard to permit indirect restraints on political association only where there was found to exist a positive substantive evil which Congress had a right to combat. *Dennis* v. *United States*, 341 U. S. 494.

Thus, although the ambit of Congressional infringement upon political association has expanded validly to include certain kinds of teaching and advocating, the power of Congress to legislate in this area is not absolute.

B. The Court has recognized restrictions on the investigative functions of Congress.

The Congressional investigative power is not absolute. *Kilbourne* v. *Thompson*, 103 U. S. 168; *McGrain* v. *Daugherty*, 273 U. S. 135. As regards First Amendment rights, such power must be subject to restrictions substantially similar to those imposed on enacted law, since it is auxilliary to the power of Congress to legislate. First Amendment rights are illusory indeed if they are zealously safeguarded from the legislative function while subject to depredations by an auxilliary and supplemental function.

In *United States* v. *Rumely*, 345 U. S. 41, the Court clearly recognized that the Congressional investigative function is subject to First Amendment limitations, but found it unnecessary to spell out those limitations at that time.

In *Quinn* v. *United States*, 349 U. S. 155, the Court specified some of the Constitutional limitations, stating at p. 161:

> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination which is in issue here."

Thus the Court has yet to outline the criteria applicable in determining the circumstances under which legislative investigative encroachments on the First Amendment are justified. The Court should do so in the instant case.

Lower federal courts have repeatedly recognized that an accommodation of conflicting interests is called for—that a balance must be struck between the Congressional interest in obtaining information on the one hand, and rights historically protected under the Constitution on the other.

In directing a judgment of acquittal on a charge of perjury, Judge Keech said, in *United States* v. *Icardi*, 140 F. Supp. 383 (U. S. D. C., D. C.), on April 19, 1956, at page 384:

> "At the outset, the court is faced with two basic principles of law: the presumption of the validity of governmental proceedings, and the presumption that the accused is innocent. Since the second presumption outweighs the first the presumption of validity must be supported by proof of the validity of the legislative proceedings and materiality of the specific answers which defendant is alleged to have falsely given. *Sinclair* v. *United States*, 279 U. S. 263, 299."

The Court further stated:

> "The court does hold that if the committee is not pursuing a bona fide legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal', even though that very testimony be relevant to a matter which could be the subject of a valid legislative investigation. * * *
>
> "There are * * * limitations upon the investigative power of the legislature which must be considered in any determination of materiality. The investigation must be to aid in legislation." *Id.*, at p. 388.

If there are such limitations on the Congressional investigative power, and if a balance between rights under the First Amendment and the Congressional interest in obtaining information with respect to substantive threatening evils must be struck, the converse must also be true, namely that:

The Congressional inquisitorial power is not absolute, but depending upon the circumstances of the particular case, must yield to First Amendment rights justifiably deemed to be of greater importance. One of such rights is the right to remain silent about political associations.

Judge Edgerton, dissenting in *Barsky* v. *United States*, 167 F. 2d 241 (D. C. Cir.), observes:

> "(The) investigation also restricts freedom of speech by forcing people to express views. Freedom of speech is freedom in respect to speech and includes freedom not to speak." *Id.*, at 254.

Judge Edgerton then refers to *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, at 624:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.
> "*We think the action of the local authorities* in compelling the flag salute and pledge *transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.*" (Emphasis added.)

The question then is, when does the public interest in compelling a witness to break silence override the right.

Certainly not, for example, when the question is wholly irrelevant to the inquiry, *McGrain* v. *Daugherty, supra;* or when the investigating body is acting without authority. *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298; *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434; *United States* v. *Rumely, supra.*

This is not to say that a witness has an unqualified right of privacy as against a proper public inquiry. He does not; but "the power to require testimony is limited, as it usually is in English-speaking countries at least, to the only cases where the sacrifice of privacy is necessary • • •". Mr. Justice Holmes in *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, at 419.

A witness' right to privacy may under the proper circumstances be invaded to his discomfort. The discomfort or embarrassment of the witness is not the governing consideration. But the right not to speak, like the right to speak, is not grounded on a right to squeamishness. It is a direct guarantee of the First Amendment.[3]

The question is: Was the Congressional investigative committee, in compelling speech and political information, under all the surrounding circumstances, justified by a clear and present danger or by the threat of a future evil whose eventuality was reasonably likely?

Ready maxims unfortunately do not suffice in this area. The Court must balance Congressional need for information against the degree of infringement on First Amendment rights. "* * * [A]s cases arise, the delicate task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights." *Schneider* v. *Irvington*, 308 U. S. 147, at 161.

In considering whether, under the circumstances, the committee was justified in asking particular questions, *amicus* respectfully suggests that the following factors should weigh heavily in balancing Congressional inquiry against rights under the First Amendment:

The inquiry will not justify First Amendment encroachment

(1) If the committee has no purpose except to pry into the witness' private affairs. *Sinclair* v. *United States*, 279 U. S. 263.

---

[3] "We assume, without deciding, for purposes of this case, that compulsion to answer the question asked by the Congressional Committee would impinge upon speech and not merely invade privacy." *Barsky* v. *United States*, 167 F. 2d 241, at 250; Cert. den., 334 U. S. 843.

(2) If the committee has no intention of using the information obtained for possible legislation, but as for instance solely to trap the witness into perjuring himself so as to be convicted therefor, *United States* v. *Icardi, supra,* or to publicize activities or conditions rather than to gather information for possible legislation. *Sinclair* v. *United States, supra.*

(3) If the committee already has the information, *United States* v. *Icardi, supra,* whether or not it seeks to use it for a proper purpose. *Id.*

(4) If the committee could easily have obtained the information otherwise. This is not to suggest that the committee must use only the alternative method; it is simply one factor to consider in deciding that the encroachment upon the witness' right to speech, belief and silence under the First Amendment is justified.

The factors suggested above are not exclusive. Also, they imply compensating factors which might justify the question put to the witness. To illustrate, the question asked might require the witness to reveal personal beliefs, but the impossibility of obtaining the information by any other means might justify infringing the witness' right of silence as to personal belief.

Amicus recognizes that the cases which are considered in the light of the Court's standards would in all likelihood involve the weighing of not one but many such factors. Paradoxically, this would make individual cases easier to decide.

C. The Committee in compelling testimony of the petitioner in the instant case has exceeded the First Amendment limitations upon its investigative function.

It seems clear from all the facts here that the Congressional investigative committee was not acting for a proper legislative purpose but was pursuing the specific line of interrogation for the sole purpose of exposing and harassing the petitioner and those with whom he had been associated. Rather than duplicate petitioner's own presentation, we respectfully refer the Court to specific pages of his comprehensive brief.

Of the facts previously enumerated, we especially urge the following for the Court's consideration:

The Committee on [illegible]-American Activities was engaged in an exposure function rather than gathering information for future legislation. Pages 35-52 and 58-64 of petitioner's brief.

The committee very likely could have obtained from its own files the information it sought as to whether certain of petitioner's former associates were Communists. Pages 64-69.

In this respect the committee failed to declare its need for the particular information about petitioner's associations in terms of a clear and present danger; a probable, future, substantive evil; or in any other terms.[4]

---

[4] Considering that in these investigations there is no judge impartially ruling on the pertinency of the questions put to the witness, it becomes increasingly important that the witness have notice of particular areas of inquiry so as to judge the question of pertinency for himself, since if he declines to answer he does so at his peril. *Sinclair* v. *United States, supra.*

Conclusion

Congressional rights and private rights have greater meaning in their interdependence with each other than in their conflict with each other. Our society thrives on the nurture from and is secured by the formulations of free political activity. Accordingly, in our fierce struggle against world totalitarian movements, it is urgent now more than ever to maintain unimpaired personal rights guaranteed by the First Amendment.

For maintaining these rights petitioner has been indicted for contempt, convicted, fined and sentenced to prison.

The First Amendment protects persons from legislative activity which unnecessarily inquires into political associations. The rights of free speech and assembly are worthless if people can be compelled as was petitioner to account for their speech and assembly. No one is truly free to associate with others if he must fear subsequent inquiry into the details of his associations by an agency of government making an investigation such as this. Are not speech and assembly, conversing and mingling with others, the very elements of association?

Amicus concludes that the standards established by the Court for justifiable invasion of First Amendment rights have not been met; that, under all the surrounding circumstances of this case, the petitioner's constitutional rights have been violated; and that, therefore, petitioner's conviction for refusing to characterize the political beliefs of his associates cannot stand.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 261

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR ROBERT M. METCALF, *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

JOHN T. WATKINS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 261

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR ROBERT M. METCALF, *AMICUS CURIAE*

INTEREST OF *AMICUS CURIAE*

Robert M. Metcalf, appearing as *amicus curiae* herein with the consent of both petitioner and respondent, is the defendant in *United States* v. *Metcalf*, Case No. 3184 in the United States District Court for the Southern District of Ohio, Western Division. In that proceeding, Metcalf has been indicted under legal and factual circumstances comparable to those involved in the instant case. Accordingly, Metcalf has a direct and substantial interest in this Court's review and disposition of the questions presented in this case.

STATEMENT

Metcalf is an artist in stained glass and a professor of art at Antioch College, Yellow Springs, Ohio. On September 15, 1954, he appeared as a witness, under subpoena, before a subcommittee of the Committee on Un-American

Activities of the House of Representatives.[1] As the indictment recites, Metcalf "testified that in the latter part of 1945 or the early part of 1946 when he was a professor at Antioch College, he beceme involved in a Marxist discussion group and admitted that there were members of the faculty of Antioch College in this group".[2] Metcalf was then asked to tell the subcommittee the names of the Antioch faculty members and students, and of other individuals, who had belonged to the "Marxist discussion group." He declined to give the names, stating his grounds of refusal in a letter which was made part of the record of the hearing,[3] and which concluded as follows:

> "The basis and scope, if any, of your committee's authority to investigate educational institutions, and individuals connected therewith, presents a fundamental and far-reaching legal question. I have no desire to restrict my testimony before your commit-

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[1]His testimony is printed in *Investigation of Communist Activities in the Dayton, Ohio Area*—Part 3, Hearing before the Committee on Un-American Activities (83rd Cong., 2d Sess.), September 15, 1954, pp. 6978-83.

[2]Metcalf's description of the group was as follows (*Investigation of Communist Activities, supra*, at p. 6979):

> "In the latter part of 1945, or the early part of 1946, I became involved with a small group. As I understood, it would be a Marxist discussion group and not an organized part of the Communist Party. Some time later, and this information didn't come through to me personally, but there was an effort to make or to suggest that this group affiliate with the student group. I did not approve of this at all. I never do approve of indoctrination of any kind. I would have nothing to do with it.
>
> "I said that I would then immediately withdraw from any activity in such a thing, and there was one Marxist meeting held at which the whole business was disbanded, largely because, I think, all of the people felt that we were not involved with what we had started with at all. These people I never heard make any subversive remarks, and as far as I know personally those people got out of that organization at the same time that I did."

[3]*Investigation of Communist Activities, supra*, pp. 6980-81.

> tee for the purpose of precipitating a judicial test. Believing as I do, however, that the inquiry is beyond the powers of your committee, and, in any event, restricted by the Bill of Rights, I shall be constrained to decline to reply to unauthorized questions, in case answering might cause other individuals unnecessary harm or embarrassment, or would otherwise cause me to lose self-respect."

On February 24, 1955 Metcalf was indicted in the Federal District Court at Dayton, Ohio, under the statute (2 U. S. C. 192) making it a misdemeanor for a witness before a duly empowered Congressional committee to refuse to answer pertinent questions. On October 3rd, 1955, the District Court (Cecil, D. J.), on motion, dismissed the indictment as "insufficient by reason of the fact that it does not allege all of the essential elements of the crime."[4] On July 10, 1956 Metcalf was again charged, under the revised indictment which is presently pending in the same court.

In the instant case, petitioner has been convicted under the same statute under which Metcalf is indicted, the charge is based in both cases on appearances before subcommittees of the same Congressional investigating committee acting under the same authority, and the questions which petitioner and Metcalf refused to answer are comparable, though not identical. All but one[5] of the issues presented in the petition are also raised by the proceeding against Metcalf, and its outcome may therefore be governed or affected by this Court's disposition of any of these questions.

---

[4] *United States* v. *Metcalf*, unreported (Crim. No. 3052, S. D. Ohio W. D.). Compare *United States* v. *Lamont*, 236 F. 2d 312, 313-15 (C. A. 2d 1956) and below 18 F. R. D. 27 (S. D. N. Y. 1955); *United States* v. *Deutch*, 235 F. 2d 853 (C. A. D. C. 1956).

[5] The fifth question stated in the petition, relating to the presence of government employees on the Grand Jury, will probably not arise in Metcalf's case.

QUESTIONS PRESENTED HEREIN

1. Whether the questions put to petitioner were within the scope of authority delegated to the Committee by Congress, and pertinent to the inquiry which the Committee was authorized to conduct.

2. Whether the questions put to petitioner were beyond the constitutional limits of Congressional investigative power, under the provisions prescribing separation of executive, legislative and judicial powers and guaranteeing the rights of free speech and assembly.

3. Whether the statute and resolutions establishing the Committee are so vague and indefinite as to furnish no ascertainable standard of guilt, and thereby deprived the petitioner of his constitutional right to due process of law.

SUMMARY OF ARGUMENT

1. *The Questions Put to Petitioner were Beyond the Scope of Authority Delegated to the Committee by Congress, and were not Pertinent to the Inquiry which the Committee was Authorized to Conduct.* The Committee is authorized by Congress to investigate "the extent, character, and objects of un-American propaganda activities in the United States" and "the diffusion within the United States of subversive and un-American propaganda . . ." On their face the questions put to petitioner, looking to the identification of certain individuals as members of the Communist Party, bear no relation to "propaganda" of any kind or to the channels of its "diffusion". Nor did the Committee lay any foundation to establish that the questions, though not *prima facie*, were in fact pertinent to the authorized inquiry. *United States* v. *Lamont*, 236 F. 2d 312 (C. A. 2d 1956). The legislative history of the

statute and resolutions establishing the Committee contains nothing to warrant expanding the scope of the language beyond its normal meaning, and clearly shows that the Congressional purpose, in harmony with the wording, was to look into the origin, contents, and channels of distribution of propaganda. Nothing in the legislative history supports the extraordinarily broad construction, adopted by the court below, that Congress has authorized the Committee to identify and "expose" every present and former member of the Communist Party. A resolution (H. Res. 88, 75th Cong. 1st sess.) the language of which might have been susceptible to such interpretation was debated and rejected by the House of Representatives in 1937 shortly before Representative Martin Dies introduced the much narrower resolution (H. Res. 282, 75th Cong. 1st sess.) adopted by the House in 1938, the language of which is identical with that of the statute under which the Committee presently operates. To overcome the wording and its legislative history, the Government may argue that in practice the Committee has purported to exercise a virtually unlimited power of inquiry into the Communist affiliations, past and present, of private individuals, and that the Committee practice has been "ratified" by Congress or the House of Representatives, in that the authorizing language has been left unaltered and appropriations have been voted to continue the Committee's work. But whatever weight might under other circumstances be given to such "committee construction" of its delegated powers, it can have none here, for the construction given a statute by those who execute its provisions will never be given an effect which would raise question of the statute's constitutional validity. *United States* v. *Standard Brewery*, 251 U. S. 210 (1920). In the present case, a construction of the authorizing statute so broad as to render pertinent the questions put to petitioner for the purpose of identifying past and present Communist Party members, would raise

very serious constitutional issues, as set forth below. Unless Congress in the plainest language has undertaken to authorize so sweeping and radical an inquiry, the language of authorization must be construed so as to avoid constitutional issues. *United States* v. *Rumely*, 345 U. S. 41 (1953); *cf. Peters* v. *Hobby*, 349 U. S. 331 (1955). The indictment must therefore be dismissed on the ground that the questions put to petitioner were not pertinent to the inquiry that Congress authorized the Committee to conduct.

II. *The Questions put to Petitioner were Beyond the Constitutional Limits of Congressional Investigative Power, under the Provisions Prescribing Separation of Legislative, Executive, and Judicial Power, and Guaranteeing the Rights of Free Speech and Assembly.* The investigative power of Congress is part of its legislative power, and is subject to the constitutional division of powers among the three branches of the government, and to all other constitutional limitations on the power of Congress, including those embodied in the First Amendment. See *Quinn* v. *United States*, 349 U. S. 155, 160-61 (1955).

A. *Separation of Powers.* The Committee's reports to Congress, as well as the other material referred to in the Petition for Certiorari (pp. 19-29), leave no doubt that the questions put to the petitioner were part of the Committee's avowed program of identifying and "exposing" past and present members of the Communist Party. The court below upheld the Committee's power to carry out such a program (233 F. 2d at 684 and 686-87), and the Solicitor General supports the decision below on that basis (Brief in Opposition to Certiorari, pp. 17-18). But such a program cannot possibly be justified as a proper exercise of legislative power. The identification, prosecution, and punishment if guilty of members of the Communist Party whose activities, actual or suspected, are

within the ambit of the criminal laws is a matter for the executive and judicial branches of the government, not for Congress. *Kilbourn* v. *Thompson*, 103 U. S. 168 (1880); *Greenfield* v. *Russel*, 292 Ill. 392, 127 N. E. 102 (1920). Congress, on the other hand, has the power to identify and "expose" an individual as a past or present member of the Communist Party only if such information is reasonably related to a legislative purpose. The Committee, in questioning petitioner, made no effort to establish any such relationship, and the material in the Petition for Certiorari (pp. 19-29) conclusively establishes that in fact the Committee had no legislative purpose in mind, but was pursuing a program of "exposure for exposure's sake". The circumstance, heavily relied on by the court below (223 F. 2d at 686-87) and by the Solicitor General (Brief in Opposition, pp. 14-16), that the Committee had various bills under consideration at the time petitioner was questioned, is of no significance unless the questions put to petitioner bore some reasonable relationship to the Committee's study of the bills. But there is no color of any such relationship. The questions put to petitioner, accordingly, lay outside the sphere of legislative power conferred on Congress by Article I of the Constitution, and the Committee was powerless to require the petitioner to answer them.

B. *First Amendment.* Even if there were an arguable relation between the questions put to petitioner and an authorized legislative purpose, the First Amendment would deprive Congress of the power to compel petitioner to answer the questions. That Amendment bars legislative acts, even though valid in all other respects, which violate the guarantees that it embodies. *Fiske* v. *Kansas*, 274 U. S. 380 (1927); *cf. American Communications Ass'n* v. *Douds*, 339 U. S. 846 (1950). As this Court has recently re-

affirmed, the First Amendment limits not only legislation, but all other manifestations of legislative power, including investigative action. *United States* v. *Rumely*, 345 U. S. 41 (1953); see *Quinn* v. *United States*, *loc. cit. supra*. The court below, in other cases, has recognized that questions such as those put to petitioner substantially infringe the First Amendment's guarantees of free speech, press, and assembly. See *Rumely* v. *United States*, 197 F. 2d 166, 173-74 (C. A. D. C. 1952). It has upheld the Committee's power to "expose" individuals "who believe in Communism" only on the theory that Communism is such a serious threat to national security that the infringement of the First Amendment is warranted. See *Barsky* v. *United States*, 167 F. 2d 241, 246; *Rumely* v. *United States*, *loc. cit. supra*. But neither in this nor earlier cases has the court below applied the standards laid down by this Court, which must be met if restrictions on free speech, press, or assembly are to be held valid. *Dennis* v. *United States*, 341 U. S. 494 (1951). Grave as is the danger of Communism, there is no basis here for finding that the information sought to be elicited by the questions put to petitioner was necessary or even useful for legislation in the field of national security. Lacking any indication of such necessity or usefulness, the First Amendment bars the imposition of penal consequences for petitioner's failure to answer.

C. *Unconstitutionality.* The First Amendment and the principle of separation of powers must be taken in conjunction when considering the constitutionality of the statute under which the Committee operates, if construed as authorizing the questions put to petitioner. Unquestionably, Congress has the authority and responsibility to protect the Government against violent overthrow, by legislative means reasonably adapted to that end. So too, the investigative power should be allowed ample scope in order that Congress may obtain the information it needs for its deliberations.

But infringements of the constitutional guarantees are not to be judicially sanctioned simply because they occur in the course of an investigation of Communism. In upholding the Committee's power to "identify" all past and present Communists, the court below wholly disregarded the constitutional values at stake here, and failed to search the issue in the terms this Court has laid down in related cases. *Dennis* v. *United States*, *supra*; *Jones* v. *Securities Commission*, 298 U. S. 1 (1936); see *Board of Education* v. *Barnette*, 319 U. S. 624, 642 (1943). Where individual rights are at stake, the investigative process should be exercised in accordance with the principle: "the least possible power adequate to the end proposed." *Anderson* v. *Dunn*, 6 Wheat. 204, 230-31 (1821). In this case the questions put to petitioner were so remote from any valid legislative purpose, the Committee's purposes were so plainly unwarranted, and the incursion on the constitutional guarantees is so deep, that the petitioner was under no legal obligation to answer, and his conviction must be set aside.

III. *The Statute and Resolutions Establishing the Committee are so Vague and Indefinite as to Furnish no Ascertainable Standard of Guilt, and thereby Deprived Petitioner of his Constitutional Right to Due Process of Law.* The statute under which petitioner was indicted (2 U. S. C. 192) punishes only the failure to answer questions "pertinent" to the inquiry, and witnesses before this Committee are therefore relegated to the authorizing statute in determining whether particular questions are or are not "pertinent." In the authorizing statute, the qualifying adjectives "un-American" and "subversive", even if read in conjunction with the phrase "attacks the principle of the form of government as guaranteed by our Constitution", are far too general to furnish a valid basis for a criminal indictment.

United States v. *Cohen Grocery Co.*, 255 U. S. 81 (1921); *Musser* v. *Utah*, 333 U. S. 95 (1948). This is especially true if the authorizing statute is given the broad construction urged by the government and adopted by the court below. *Cf. Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952). Had the House of Representatives sought to compel the petitioner to answer by exercising its own contempt power, the vague wording of the authorizing statute might be overlooked, for then the petitioner would be on notice and would have had opportunity to avoid contempt by answering at the bar of the House. *Cf. Jurney* v. *MacCracken*, 294 U. S. 125 (1935). But here the House chose to invoke criminal process, and the precision of the statutes under which he is indicted must meet the requirements of due process, just as in any other statutory prosecution. Here the relevant statutory provisions are vague and uncertain far beyond the permissible bounds, and the indictment must therefore be dismissed.

ARGUMENT

The cases of Watkins and Metcalf are two of many presently pending in the courts, in which witnesses before legislative investigating committees have declined to answer questions, not under claim of privilege, but on the ground that the committees lacked authority to require that the questions be answered. Most of these cases involve committees which are active in the general field of government security and individual loyalty, and witnesses who have declined to answer questions about the political associations, activities, or opinions of themselves or other persons.

There can be no question of the importance of the constitutional issues raised in cases of this type, as this Court has made abundantly clear in two recent decisions. See *United States* v. *Rumely*, 345 U. S. 41, 44; *Quinn* v. *United*

States, 349 U. S. 155, 160-61. But in the present case there is an important question of statutory interpretation which must be resolved before the constitutional questions are approached. *United States* v. *Rumely*, *supra*; *Hurd* v. *Hodge*, 334 U. S. 24 (1948); *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U. S. 129 (1946).

I.

THE QUESTIONS PUT TO PETITIONER WERE BEYOND THE SCOPE OF AUTHORITY DELEGATED TO THE COMMITTEE BY CONGRESS, AND WERE NOT PERTINENT TO THE INQUIRY WHICH THE COMMITTEE WAS AUTHORIZED TO CONDUCT.[6]

The Legislative Reorganization of 1946 and House Resolution 5 (83rd Cong. 1st sess.), in identical language, authorize the Un-American Activities Committee to investigate "the extent, character, and objects of un-American propaganda activities in the United States" and "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attack the principle of the form of government as guaranteed by our Constitution." A third clause of the authorization covers in "all other questions in relation thereto that would aid Congress in any necessary remedial legislation." It is apparent from this language that the *subject* of the investigation is "propa-

[6]In the Brief in Opposition to the Petition for Certiorari, the Solicitor General suggested (p. 15, note 7a) that this issue is not before the Court because petitioner has not raised it. But even if that were so, this Court can not be forced to decide constitutional issues when, as here, there is a non-constitutional issue dispositive of the case. *Peters* v. *Hobby*, 349 U. S. 331; *cf. Sibbach* v. *Wilson & Co.*, 312 U. S. 1 (1941); *Kessler* v. *Strecker*, 307 U. S. 22 (1939); *Swift & Co.* v. *Hocking Valley Ry. Co.*, 243 U. S. 281 (1917); see *Emspak* v. *United States*, 349 U. S. 190, 198, 204 (1955).

ganda" of the specified types, and that the *purpose* is to assist Congress in determining whether "remedial legislation" is necessary, and if so, what form it should take.

The questions which petitioner refused to answer were whether or not he knew certain named individuals as members of the Communist Party during the period 1942 to 1947. On their face, these questions bore no relation to "propaganda" of any sort.[7] As the dissenting judges below stated (233 F. 2d at 694):

> "The questions do not relate in any clear or direct way to the extent, the character, the objects, or the diffusion, of any propaganda, subversive and un-American or otherwise. The government has not shown that in asking these questions the Committee was seeking, even indirectly, information about the extent or character or objects or diffusion of propaganda. It has not shown that Watkins, or his union, or the persons about whom the Committee inquired, engaged in propaganda, or that the Committee sought to learn whether they did."

Nor do the questions relate to the necessity or form of "remedial legislation." The majority below relied heavily (233 F. 2d at 685-86) on the circumstance that the Committee, at the time of petitioner's appearance before it, had under consideration bills relating to wire-tapping, and a bill to deny the use of the National Labor Relations Board to "communist-infiltrated" labor unions. But the mere fact

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[7] See *United States* v. *Singer*, 139 F. Supp. 847, 851 (D. C. D. C. 1956). "On its face, the question . . . which concerns whether certain named individuals attended meetings mentioned by the defendant, does not appear pertinent to the inquiry." In that case (now pending in the Court of Appeals for the District of Columbia), which also involved the Committee on Un-American Activities, the district court held that since the defendant was a teacher, and the teaching profession is a possible channel of Communist propaganda, the identity of individual Communist teachers was a matter pertinent to the inquiry. This conclusion required, as in the present case, an extremely broad construction of the Committee's statutory mandate.

that such bills were under study by the Committee did not render these questions pertinent to their consideration. On the contrary, as the dissenting judges pointed out (223 F. 2d at 691-92 and 694), the significance of the questions for purposes of legislation was at best remote and theoretical.

But the lower court did not rest its decision solely on the supposed usefulness, of the answers demanded from petitioner, in connection with the bills then pending. It likewise embraced the sweeping interpretation of the Committee's delegated authority, put forward in that court's earlier decisions,[8] that the Committee is empowered "to identify individuals who believe in Communism and those who belong to the Party." Certainly there is no accepted meaning of the word "propaganda" to support such a construction, so out of keeping with the traditional functions of legislative committees. Indeed, the court's reading of the authorizing statute would appear to be expressly barred by its third clause, which prescribes as the Committee's purpose the consideration and formulation of "remedial legislation," and which thus authorizes only such questions (including "identifying" questions) as are reasonably related to that purpose.

In short, the petitioner's conviction is grounded on a painfully distended construction of the authorizing statute, which is at war alike with the wording, and with the historic practice of Congressional committees. This construction is so patently unsound that there is no occasion to look to legislative history or auxiliary principles of legislative construction. Nor has the government sought to buttress its position from these sources. This is hardly surprising, for their impact is strongly favorable to petitioner, as they reinforce the normal interpretation of the authorizing statute, and show that the Committee's delegated power was intended

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[8] *Barsky* v. *United States*, 167 F. 2d 241 (1948); *Lawson* v. *United States*, 176 F. 2d 49 (1949).

to be limited by the accepted bounds of legislative investigations.

The legislative history of the authorizing statute[9] goes back to 1930, when the House of Representatives adopted a resolution[10] calling for an investigation of "communist propaganda in the United States and particularly in our educational institutions; the activities and membership of the Communist Party of the United States"; and other closely related subjects. It will be observed that this resolution was significantly different from the statute under which the present Committee operates, in that it specifically directed an inquiry into the *membership* of the Communist Party. The reason for this is not far to seek, for it is apparent from the discussion on the floor, the hearings, and the ensuing report, that the sponsors of the investigation were deeply concerned with aliens, and the deportation of individual alien Communists.[11]

The true progenitor of the authorizing statute was the resolution introduced by Representative Samuel Dickstein in 1934,[12] calling for investigation of Nazi propaganda activities. The language of the Dickstein resolution is identical with that of the authorizing statute, except for the use of the word "Nazi" instead of "un-American" in the first clause, and the omission of the words "and un-American" in the second.[13] Pursuant to this resolution, a special House

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[9]The history of the authorizing statute is traced in Augustin R. Ogden, *The Dies Committee* (1945), pp. 14-46.

[10]H. Res. 220 (71st Cong. 2nd sess.), introduced May 12, 1930, debated and adopted May 22, 1930 (*Cong. Rec.*, 71st Cong., 2nd sess.) pp. 8810-11, and 9390-98.

[11]Ogden, *op. cit. supra*, pp. 21-31; see also the remarks of Representative Hamilton Fish (one of the principal initiators of the investigation) during the debate (*Cong. Rec.*, 71st Cong., 2nd sess.) p. 9393.

[12]H. Res. 198 (73d Cong. 2nd sess.), introduced January 3, 1934, debated and adopted March 20, 1934.

[13]*Cong. Rec.* (73 Cong. 2nd sess.), pp. 13 and 4934. The Dickstein resolution is quoted in Carr, *The House Committee on Un-American Activities* (1952) pp. 13-14.

Committee under the chairmanship of Representative John McCormack held hearings, and filed a report in February, 1935.[14]

From the discussion that preceded the adoption of the Dickstein resolution, it is plain beyond question that the sponsors of the resolution intended its language to be taken in accordance with its natural meaning. This was to be an investigation of *propaganda*.[15] Representative Dickstein, for example, told the House that:[16]

> "The special investigating committee should seek to accomplish three primary objects: First, ascertain the facts about methods of introduction of destructive, subversive propaganda originating from foreign countries; second, ascertain facts about organizations in this country that seem to be cooperating to spread this alien propaganda through their membership in this country; third, study and recommend to the House appropriate legislation which may correct existing facts and tend to prevent the recurrence of a similar condition in the future."

The investigation was conducted in line with these expressions. The leadership and activities of Nazi and Communist organizations was studied, with special emphasis on propaganda operations.[17] There was no effort to "identify" individual members of such organizations other than as became relevant to the inquiry's legislative objectives. The committee's primary recommendation was the enactment of legislation for the registration of foreign propaganda agents, a proposal which bore fruit in the Foreign Agents Registration Act of 1938.[18]

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[14] *Investigation of Nazi and Other Propaganda*, H. Rep. No. 153 (79th Cong. 1st sess.).

[15] See the debate on the resolution, *Cong. Rec.* (73d Cong., 2nd sess., March 20, 1936), pp. 4938-46.

[16] *Id*, at p. 4946.

[17] Ogden, *op. cit., supra*, pp. 34-37; *Investigation of Nazi and Other Propaganda, supra* note 14.

[18] Public Law No. 583, June 8, 1938, 22 U. S. C. 611-21.

In 1937, Representative Dickstein introduced yet another resolution for an investigation,[19] the language of which was remarkably sweeping, and which now utilized the expression "un-American". It called for an investigation of:

> "the character, objects, extent of operations, roster of membership and officers, all sources of revenue, and distribution of finances by and of any organizations or groups of individuals acting together found operating in the United States for the purpose of diffusing within the United States of slanderous or libellous un-American propaganda of religious, racial, or subversive political prejudices which tends to incite to the use of force or violence or which tends to incite libellous attacks upon the President of the United States or other officers of the Federal government, whether such propaganda appears to be of foreign or domestic origin; . . ."[20]

This second Dickstein resolution did not purport to embrace the membership of such organizations in years long past, and in that respect was perhaps less sweeping than the authority now claimed by the Committee. But the 1937 resolution did specifically envisage the "identification" of all members of "un-American propaganda" organizations, and in that respect cuts very close to the question of interpretation presently at issue. This resolution was debated at some length on April 8, 1937,[21] and on the division was overwhelmingly defeated.[22]

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[19]H.Res. 88 (75th Cong., 1st sess.).

[20]The second clause of the resolution concerned the use of the mails, and the third clause covered in "related" questions.

[21]*Cong. Rec.* (75th Cong., 1st sess.) pp. 3283-89.

[22]*Id.*, p. 3289. The vote on the motion to lay the resolution on the table was 184 to 34. It is of interest that Representative Hamilton Fish, usually a strong protagonist of investigations of this type, opposed the 1937 Dickstein resolution on the ground that it would "restore the alien sedition laws". *Id.*, p. 3285.

Shortly after the defeat of the 1937 Dickstein resolution, Representative Martin Dies introduced the resolution[23] under which the special committee that came to bear his name was established in 1938. Its language, identical with that under which the Committee presently operates, has remained the charter of the House "un-American activities" investigation since that time.

As is apparent from the foregoing account, therefore, the language of both the Dies resolution and the present statutory authorization was derived from that of the 1934 Dickstein resolution. Both called for an investigation of "propaganda", and if the discussion on the floor in 1938[24] covered a broader range than in 1934, there was certainly nothing in 1938 to support the notion that the Committee was empowered to "identify" all Communist Party members and believers, as is now claimed.[25]

On the contrary, the legislative history traced above plainly shows that the House had no such broad power of individual exposure in mind when it adopted the Dies resolution. For the House had refused to adopt the 1937 Dickstein resolution which expressly embraced that power. Then in 1938 it approved the Dies resolution with the much narrower language, relating only to propaganda, which had previously been utilized in the 1934 Dickstein resolution. The implications of this sequence are obvious, and clearly show that the language of the statutory authorization, when adopted, was not intended to be stretched beyond its natural intendment.

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[23]H. Res. 282 (75th Cong. 1st sess.), introduced June 21, 1937.

[24]*Cong. Rec.* (75th Cong., 3d sess., May 26, 1938), pp. 7568-861.

[25]Representative Dies did speak of the "exposure" of "subversive activities". *Id.*, p. 7570. But this is a far cry from the public identification of all individuals who "believe" in Communism, or who have ever been Party members.

The Solicitor General may perhaps argue[26] that the practice of the Un-American Activities Committee over a period of years has been to put questions to all "suspect" witnesses similar to those put to petitioner, and that the Committee's practice has been Congressionally "ratified" by reenactment of or failure to amend the statutory authorization, or by repeated appropriations to support the Committee's activities. Such an argument might perhaps be formulated by analogy from the principle of "administrative construction", sometimes reinforced by that of "Congressional reenactment".

But these principles are of no avail to the Government in the present case. There are no words in the authorizing statute susceptible to the interpretation that "identification" of Communist Party members and "believers" is within the Committee's power. On the contrary, the language permits no such construction.[27] The broad scope given the statute by the court below does not lie within the area of reasonable interpretation, and therefore can not be established by the Committee's own practice. See *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 640: "Where a statutory body has assumed a power plainly not granted, no amount of such [administrative] interpretation is binding upon the courts."[28]

Furthermore, the argument that Congress has effectively "ratified" the broad construction for which the Government must contend is at war with two well-established and plainly applicable principles of statutory interpretation. The first is that criminal statutes are to be narrowly con-

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[26]See the Petition for Certiorari at p. 34, and the Government's reference thereto in its Brief in Opposition at p. 15, note 7a.

[27]*Supra*, pp. 12-13.

[28]To the same effect, see *Biddle* v. *Commissioner*, 302 U. S. 573 (1938); *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740 (1931); *United States* v. *Missouri Pac. R. Co.*, 278 U. S. 269; *Chicago, M & St. P. Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 94 (120).

strued in favor of the defendant. The second is that statutes are, whenever possible, to be so construed as to avoid constitutional doubts.

This is, after all, a criminal case. The House could have sought to compel petitioner to answer by exerting its own contempt power.[29] Instead, petitioner has been indicted for a crime under the statute punishing failure to answer questions "pertinent" to a matter under inquiry before the Committee. Whether or not the questions were "pertinent" is determined by reference to the authorizing statute, which thus becomes an essential part of the legal basis of the alleged offense. Under accepted principles of criminal law, therefore, the authorizing statute must be construed narrowly, in favor of the defendant. See, *e.g.*, *United States* v. *Resnick*, 299 U. S. 207 (1936). The Committee's own conception of its power under the authorizing statute can not be allowed to overcome the natural meaning of the language, or to expand that meaning so as to impose penal consequences in cases not plainly covered by the actual language. *United States* v. *Standard Brewery*, 251 U. S. 210 (1920); *cf. Iselin* v. *United States*, 270 U. S. 245 (1926).

The House authorized this Committee to look into "un-American propaganda activities", and it is plain that in this case the Committee was doing nothing of the sort. It strains the strands of reasonableness past the breaking point to infer that the House meant its Committee to poke about in fields so disparate in time and subject matter from the declared object of the inquiry. The questions put to Watkins and Metcalf are much farther removed from any possible pertinency than those that have been held not pertinent in other cases. *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C. 1953); *United States* v. *Lamont*, 236 F. 2d 312 (C. A. 2d 1956); *United States* v. *Kamin*, 136 F. Supp. 791

[29] *Jurney* v. *MacCracken*, 294 U. S. 125 (1935); *McGrain* v. *Daugherty*, 273 U. S. 135 (1927).

(D. Mass. 1956); *United States* v. *DiCarlo*, 102 F. Supp. 597 (N. D. Ohio 1952); *In re Battelle*, 207 Cal. 227, 277 Pac. 725 (1929); *People* v. *Foster*, 236 N. Y. 610, 142 N. E. 304 (1923).

But even if some tenuous showing of pertinence be assumed as theoretically possible, the pressure of the constitutional issues raised thereby requires that the authorizing statute and resolution be not construed so broadly as to bring these questions within its scope. This Court has made it clear that the Houses of Congress must not be assumed to have authorized committees to ask questions that impinge closely on constitutional rights, unless that meaning has been made unmistakably clear. *United States* v. *Rumely*, *supra*; see also Judge Edgerton's opinion, dissenting in part, in *United States* v. *Lattimore*, 215 F. 2d 847, 863-69 (C. A. D. C. 1954). Nor will "administrative construction" or "Congressional re-enactment" be allowed to give a statute a meaning or application which raises or aggravates constitutional problems. *United States* v. *Standard Brewery*, *supra*.

The constitutional questions raised by the questions put to Watkins and Metcalf are at least as grave as, and more numerous than, those that dictated the result in the *Rumely* case. But whereas the decision in the *Rumely* case required a narrow and restrictive interpretation of the authorizing resolution which some might regard as strained, in the present case the authorizing acts must be stretched beyond their reasonable meaning to bring the questions within their scope.

The determination of this case, therefore, is governed *a fortiori* by the *Rumely* decision. The questions put to Watkins were beyond the authority delegated to the Committee, and therefore not pertinent to the inquiry that the Committee was authorized to conduct. Accordingly, the judgment below should be reversed.

II.

THE QUESTIONS PUT TO PETITIONER WERE BEYOND THE CONSTITUTIONAL LIMITS OF CONGRESSIONAL INVESTIGATIVE POWER, UNDER THE PROVISIONS PRESCRIBING SEPARATION OF LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWER, AND GUARANTEEING THE RIGHTS OF FREE SPEECH AND ASSEMBLY.

Since the investigative power of Congress is a part of its legislative power, the former is both subject to and supported by all those provisions of the Constitution which shape the latter. This Court has recently described, in a statement both pithy and comprehensive, the several constitutional limits on the investigative power, including those that are pertinent to the present case:[30]

> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights . . ."

If the constitutional questions in this case are to be determined, therefore, the crucial issues are whether the questions put to petitioner were within the reasonable reach of legislative power, and whether, even if they were, the Bill of Rights protected petitioner against the compulsion of answering.

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[30]See *Quinn* v. *United States*, 349 U. S. 155, 160-61 (citations omitted).

A. Separation of Powers

The investigative power of Congress is derived by implication from Article I of the Constitution, vesting "All legislative powers" in Congress. Accordingly, the Houses of Congress cannot validly exercise their investigative power outside the legislative sphere or in such a way as to usurp or destroy executive or judicial functions, and efforts to do so are subject to check by judicial review. *Kilbourn* v. *Thompson*, 103 U. S. 168 (1880).

The court below and the Solicitor-General have sought to justify the questions put to petitioner on the basis that they were, on their face, relevant to a legislative purpose—*i.e.*, to an investigation of the sources and diffusion of "un-American" propaganda, or to the study of possible "remedial legislation" in that field. If the questions were indeed fair *prima facie*, then it might well be that extrinsic evidence of the Committee's subjective motives would be judicially irrelevant. Lawful power may be abused for personal or political ends; the courts cannot constantly look behind the facts of its possession and exercise to check its misuse. If the legislature specifies a proper subject of inquiry, and its investigating committee puts questions that are *prima facie* relevant to the subject, ordinarily the courts will not review the motives of the committee's members.[31]

But in the present case, the questions put to petitioner were not ostensibly relevant to a legislative purpose. They did not on their face relate to propaganda. They bore no apparent relation to any question of remedial legislation. The court below and the Solicitor General feebly urge that the questions were relevant to the Committee's consideration of a bill relating to Communist-infiltrated labor unions.[32]

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[31] See, *e.g.*, *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463, 487 (1885): "We are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed . . ."

[32] See 223 F. 2d at 686-87, and the Brief in Opposition to Certiorari, p. 16.

But in neither place are any reasons given why the matter of identifying these particular individuals as Communists in the period 1942-47 had even the slightest bearing on any legislative problem.

The personal conduct of individuals *may* be pertinent to the study of legislation, but the pertinence must be apparent, or emerge from evidence, if questions are to be justified. It is not a blanket proposition. The consideration of "remedial legislation" does not *ipso facto* warrant a legislative committee in compiling a running, public roster of all individuals whose past or present conduct might bring them within its ambit. It is obvious that the consequences of so radical and sweeping a concept of legislative power would be truly revolutionary.

If on their face the questions put to petitioner served no legislative purpose, can that purpose be gathered from extrinsic evidence? The government has made no effort to supply it. Failing such a showing, the petitioner cannot be compelled to answer the questions. *Kilbourn* v. *Thompson, supra; United States* v. *Lamont*, 236 F. 2d 312 (C. A. 2d 1956); *Bowers* v. *United States*, 202 F. 2d 447 (C. A. D. C. 1953); *United States* v. *Icardi*, 140 F. Supp. 383 (D. C. D. C. 1956); *Ward Baking Co.* v. *Western Union Telegraph Co.*, 205 App. Div.) 723, 200 N. Y. Supp. 865 (1923); *People* v. *Webb*, 5 N. Y. Supp. 855 (1889).

Furthermore, the petitioner has come forward with abundant and compelling proof[33] that the Committee did *not*, in putting the questions, have in mind any purpose relating to the inquiry into propaganda specified by Congress, or to "remedial legislation." Rather, this extrinsic evidence conclusively shows that the Committee's purpose was purely one of exposure, and was part of the Committee's continuing program of compiling a roster of past and present Communists and Communist "believers", in no matter what circumstances or walk of life.

[33]Petitioner's Brief, pp. 39-76.

The court below and the Solicitor General attempt to brush away petitioner's showing[34] on the ground that it is not "evidence", and that the issue of legislative purpose cannot be "solved by generalities culled from speeches", which would not establish whether the asserted power of exposure was being exercised "in any particular inquiry". Whatever weight these arguments might have if the questions were *prima facie* related to a legislative purpose,[35] they can have none where, as here, the questions have no ostensible relation to legislative activity. See *United States* v. *Lamont, supra,* at p. 316; *United States* v. *Kamin,* 136 F. Supp. 791, 804. For in this posture, the legislative quality of the questions can *only* be determined by reference to extrinsic circumstances. So tested, they are patently non-legislative in their actual purpose.

Possibly aware that the legislative character of the questions put to petitioner is conspicuously lacking, both in appearance and actuality, the court below and the Solicitor General are obliged to fall back on the position which lies at the root of the prosecution's case. This is the proposition that exposure—or identification, which amounts to the same thing—of all past and present Communists and Communist believers *is* a legitimate legislative function.[36] The implications of this position in terms of the First Amendment are discussed below.[37] But quite apart from the Bill of Rights, such a conclusion is an impossible one to support within the constitutional framework of our government, and the separation of powers which is one of its fundamental features.

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[34]233 F. 2d at 687, and Brief in Opposition to Certiorari, pp. 18-20.

[35]*Supra,* p. 22.

[36]233 F. 2d at 684, and 686-87, and Brief in Opposition to Certiorari, pp. 17-18.

[37]*Infra,* pp. 26-31.

It is wholly inconsistent with our constitutional structure that legislative committees should abandon themselves to a chase after individuals, and dedicate themselves to wholesale and retail "exposure", without limit in time, place or circumstance. Such conduct constitutes a patent invasion of executive and judicial functions, for it is the task of the executive to collect evidence against individuals, and the task of the judiciary to determine whether evidence establishes criminal guilt. And no branch of the government is empowered to "expose" individuals by force of law for anything other than criminal conduct, unless such exposure is incidental to the accomplishment of other authorized objectives.

Furthermore, it is well settled that the principle of separation of powers is not merely a matter of governmental housekeeping; it is also a cornerstone of individual rights. *Kilbourn* v. *Thompson, supra; Jones* v. *Securities Commission*, 298 U. S. 1 (1936); see *Jurney* v. *MacCracken*, 294, U. S. 125, 147-48 (1935). A striking illustration is to be found in *Greenfield* v. *Russel*, 292 Ill. 392, 127 N. E. 102 (1920), wherein an attempted investigation of charges of corruption against a religious sect was held unauthorized as an invasion of the judicial sphere, to the injury of those who were accused. And many years earlier the Court of Appeals of New York State declared in *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463 (1885) that (at p. 485):

> "An investigation instituted for the mere sake of investigation, or for political purposes, not connected with intended legislation, or with any of the other matters upon which the house could act, but merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, where the legislature had no power to put him or it on trial for the supposed offenses . . . would not, in our judgment, be a legislative proceeding, or give to either house jurisdic-

tion to compel the attendance of witnesses or punish them for refusing to attend."

Finally, the Committee's attempt to exercise this non-existent power of "exposure" infringes not only the doctrine of separation of powers, but the basic theory of the federal government as one of *limited* powers, comprising only those delegated to it by the Constitution. By necessary implication, and by the express provision of the Tenth Amendment, all other powers are reserved to the States or the people.

For this very reason, Alexander Hamilton and others opposed the Bill of Rights as unnecessary, because Congress had been given no powers that could be used to restrict basic freedoms. See *The Federalist*, No. 81 (Hamilton). In seeking to compel petitioner to answer the questions put to him, the Committee can have had no purpose other than to hold his and other names up to the "public animadversion" condemned by the New York Court of Appeals in the *Keeler* case, *supra*. The Constitution gives neither Congress nor the federal government itself any power to do this.

B. The First Amendment

Even if there were an arguable relation between the questions put to petitioner and an authorized legislative purpose, that would not establish the Committee's right to require him to answer. The powers of Congress are not only limited to those of "legislative" character; they are likewise restricted by the specific prohibitions contained in the Bill of Rights. Those prohibitions, as this Court has recently declared, apply not only to legislation, but to legislative investigations as well. See *Quinn* v. *United States*, 349 U. S. 155, 160-61. In the present case the relevant constitu-

tional provisions are those in the First Amendment, guaranteeing freedom of speech, press, and assembly.[38]

In his brief, petitioner has stated[39] the nature of the infringement of the First Amendment which would result from his being compelled to answer the questions put to him, and little more need be said here. It is true that one of the principal historical purposes of that Amendment was to guarantee the individual's right to speak out, orally or in writing, on controversial public matters, and especially to protect him against subsequent prosecution for seditious libel.[40] But even in Revolutionary times it was recognized that freedom of speech and press are far more than the personal right of an individual to speak or write. They guarantee to the people that there shall be *freedom of communication among men*. As early as 1774 the Address of the Constitutional Congress to the inhabitants of Quebec referred to freedom of the press as ensuring the "ready communication of thoughts between subjects".[41]

Freedom of communication can be as effectively suppressed by inquisition as by censorship. Judges have found diverse expressions of this fact. In the past century, Justice Miller spoke of "private affairs",[42] and in several subsequent decisions in the investigative field this Court has

[38]These are restrictions not identical with but additional to those arising out of the separation of powers. For example, the several state laws which this Court has set aside under the First (*via* the Fourteenth) Amendment were indubitably the exercise of legislative power, in a field appropriate to its exercise. But the manner or extent of exercise abridged the individual freedoms guaranteed by the Bill of Rights, and the laws were therefore held invalid. See, *e.g.*, *Fiske* v. *Kansas*, 274 U. S. 380 (1927); *cf. American Communications Ass'n.* v. *Douds*, 339 U. S. 846 (1950).

[39]Petitioner's Brief, pp. 100-110.

[40]See, *e.g.*, Chafee, *Freedom of Speech and Press* (Freedom Agenda Committee, 1955), pp. 35-41.

[41]*Id.*, at 40-41, where it is also mentioned that in 1789 the National Assembly in Paris declared as one of the Rights of Man: "The free communication of thoughts and opinions".

[42]*Kilbourn* v. *Thompson*, *supra*, at 195.

spoken of "private" matters or the "right of privacy".[43] In the context of the Fourth Amendment, Justice Brandeis referred[43a] to "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." Twenty years ago Justice Sutherland listed as one of "the three protective rights of the individual" his freedom from "unlawful inquisitorial investigations."[44] More recently Justice Jackson wrote:[45]

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein . . ."

But however this "anti-inquisitional" right is phrased, there is no longer any doubt that it is a part of the freedom safeguarded by the Bill of Rights, especially in the First and Fourth Amendments. Therefore, questions put by a legislative investigating committee which search a witness' record of political association, expression, and belief undeniably impinge on the First Amendment guarantees, and infringe those guarantees unless justified under the judge-made qualifications of the Amendment's absolute language, such as the "clear and present danger" doctrine or its later variants.

Questions such as those put to petitioner have been involved in earlier cases, both in this Court and the lower court. Although the lower court, by a divided vote, has upheld the Committee's constitutional power to require answers to "identifying" questions of this type,[46] apparently

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[43] *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407, 417-18 (1908); *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 305-06 (1924); *Sinclair* v. *United States*, 279 U. S. 263, 291-92 (1929).

[43a] *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928).

[44] *Jones* v. *Securities Commission*, 298 U. S. 1, 28 (1936).

[45] *Board of Education* v. *Barnette*, 319 U. S. 624, 642 (1943).

[46] In addition to the instant case, see *Barsky* v. *United States*, 167 F. 2d 241 and *Lawson* v. *United States*, 176 F. 2d 49.

without limit if related to Communism, it has nevertheless explicitly recognized that such questions impinge on the First Amendment, and seriously.[47] This Court has not hitherto undertaken to pass on the problem of constitutional power, but has made clear its awareness that sharp and searching issues under the First Amendment are indeed presented by "identifying" questions such as were put to petitioner. *United States* v. *Rumely*, 345 U. S. 41 (1953).

In the present case, accordingly, the issue is whether the questions put to petitioner were of such a nature that the courts should sanction their inroads on freedom of speech and association, for overriding reasons of national interest. The questions relate to Communism and the identification of Communists, and for the court below that is enough to dictate an affirmative answer. In the context of lobbying, it has ruled, the "identifying" questions put to Rumely were at best of dubious constitutional validity; in the context of Communism, such questions to Barsky or the petitioner are abundantly justified despite the impingement on the First Amendment.[48]

The essential vice and fallacy of the position taken by the majority of the lower court is that it totally subordinates to the legislative power the constitutional provisions that limit that power. To establish an absolute and unlimited investigative power to "identify" every individual

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[47]See Judge Prettyman's opinions in the *Barsky* case, *supra*, at pp. 249-50, and the *Rumely* case, 197 F. 2d at 174 ("the realistic effect of public embarrassment is a powerful interference with the free expression of ideas").

[48]See footnote 47, *supra*. Judge Prettyman went so far as to suggest that in the field of national security Congress may use its investigative power not only in support of its legislative responsibilities, but as an independent weapon of governmental self-presentation. In a dissenting opinion in a later case concerning other questions, he distinguished between the "factually real" danger necessary to justify legislation in derogation of the First Amendment, and the "potential" danger which is enough to warrant such investigative action. See *National Maritime Union* v. *Herzog*, 78 F. Supp. 146, 177-78 (D. C. D. C. 1948).

who "believes" in Communism or any other doctrine, however noxious, is an unbalanced and indefensible conclusion, the logical implications of which are staggering.

If this Committee has the power attributed to it by the majority below to require any individual to assist it in identifying past and present Communist members and "believers," the arguably relevant breadth of questioning is enormous. Cf. *Tenney* v. *Brandhove*, 341 U. S. 367, 380 (1951). Furthermore, the Committee surely has the power to cross-examine witnesses to test the veracity, candor and completeness of their testimony. It is easy to envisage the virtually unbounded scope of arguably relevant questioning about opinions and associations that would be open to the Committee to pursue. Finally, the Committee's power under the statute (2 U. S. C. 192) is not restricted to oral testimony; it may also order the production of books and records. Under the theory of the majority below, the Committee would clearly be empowered to compel any person to produce any letters or other documents in his possession, no matter how personal in character, containing any reference to his attitude or that of anyone else toward Communism or any matter related to Communism.

No doubt the Government may reply that these things are not involved in the instant case. True enough, but it is certainly part of a wise jurisprudence to envisage the necessary consequences of a position or principle before adopting it. Whatever disposition is made of the instant case, the position taken by the lower court in this and earlier cases is insupportable, and leads inevitably to grotesque and intolerable corollaries.

Neither in this nor earlier cases has the court below applied the standards laid down by this Court, which must be met if restrictions on free speech, press, or assembly are to be held valid. *Dennis* v. *United States*, 341 U. S. 494 (1951). Grave as is the danger of Communism, there is no basis here for finding that the information sought to be

elicited by the questions put to petitioner was necessary or even useful for legislation in the field of national security. Lacking any indication of such necessity or usefulness, the First Amendment bars the imposition of penal consequences for petitioner's failure to answer.[49]

C. Unconstitutionality

The two main branches of the constitutional problem in this case—separation of powers and the First Amendment—are distinct in theory[50] and may in many circumstances differ in their impact. But in the present case, it is perhaps artificial to endeavor to keep the two in separate compartments. Rather, the First Amendment and the principle of separation of powers should be considered in conjunction, in finally determining the constitutionality of the statute under which the Committee operates, if construed as authorizing the questions put to petitioner.

Unquestionably, Congress has the authority and responsibility to protect the Government against violent overthrow, by legislative means reasonably adapted to that purpose. So

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[49]The Solicitor General's suggestion (Brief in Opposition to Certiorari, p. 22), that petitioner has waived his right to challenge the Committee's authority under the First Amendment because he "freely testified as to his own past history and general associations," is without substance. This is not a question of privilege, as in the case (*Rogers* v. *United States*, 340 U. S. 367) relied on by the Solicitor General. A witness before a legislative committee may voluntarily answer questions which are outside the compulsory powers of the committee, without sacrificing his right to challenge the committee's authority to put other questions. See *Bowers* v. *United States*, 202 F. 2d 447, 452 (C. A. D. C. 1953). The privilege against self-accusation (at issue in the *Rogers* case, *supra*) is "a privilege to withhold answers and not a privilege to limit the range of public inquiry". See *United States* v. *Monia*, 317 U. S. 424 (1943); *cf. Emery's Case*, 107 Mass. 172, 184 (1871). One can waive by not asserting a personal privilege to refuse to answer questions that a tribunal is empowered to put, but one cannot waive one's right to refuse to answer some unauthorized questions by voluntarily answering others.

[50]See footnote 48, *supra*.

too, the investigative power should be allowed ample scope in order that Congress may obtain the information it needs for its deliberations.

In the present case this Court is confronted, and not for the first time, with a problem of balance and adjustment between on the one hand the Government's right to protect itself against violent overthrow, and on the other hand the preservation of governmental structure and the protection of individual rights in accordance with the constitutional provisions dedicated to those ends. There are several notable versions of the equation in the law books, of which the two perhaps most often invoked are Justice Holmes' "clear and present danger" test[51] and Judge Learned Hand's formulation,[52] approved by this Court in *Dennis* v. *United States*, 341 U. S. 494, 501. In bringing judgment to bear on such imponderables as freedom and security, even the best-phrased statements are chiefly valuable in evoking an attitude of mind conducive to a dispassionate, informed, and imaginative appraisal.

This is precisely what the majority of the court below failed to render. The gravity of the invasion of free speech wrought by questioning such as is involved in the instant case is apparent, and was clearly recognized by all members of this Court, as well as the court below in the *Rumely* case. Such an invasion is not to be judicially sanctioned merely because the questions refer to Communism.

In the cases of the petitioner and Metcalf, the relation of the questions to the danger of the violent overthrow of government is exceedingly remote. The questions concern events many years past, and persons and situations far removed from the national security. That the House of Representatives needed the information called for by the questions for any legislative purpose is not seriously argu-

[51] *Schenck* v. *United States*, 249 U. S. 47, 52.
[52] *United States* v. *Dennis*, 183 F. 2d 201, 212 (C. A. 2d 1950).

able. The proof that the Committee's real purpose was not legislative but punitive is compelling. There is no reasonable relation between the questions and the inquiry into "un-American propaganda" which the Committee is empowered to conduct. The endless "identification" of individuals who may in the past have had some connection with Communism is no proper legislative function, and undermines the separation of powers. The incursion on the guarantees in the Bill of Rights is deep and dangerous, whether viewed from the right, left, or center of the political spectrum.

Other cases may well present situations in which reasonable men might differ in the course of an analysis such as the foregoing. In the instant case, the lower courts failed to make any analysis whatsoever. They simply did not undertake to search the constitutional issue in the general terms that this Court has laid down in related cases. The result is a decision which ignores its own logical consequences, which disregards the facts necessary to a realistic and informed conclusion, and which must surely be reversed.

III.

THE STATUTE AND RESOLUTIONS ESTABLISHING THE COMMITTEE, ESPECIALLY IF CONSTRUED SO BROADLY AS TO AUTHORIZE THE QUESTIONS PUT TO PETITIONER, ARE SO VAGUE AND INDEFINITE AS TO FURNISH NO ASCERTAINABLE STANDARD OF GUILT, AND THEREBY DEPRIVED PETITIONER OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.

The statute under which petitioner was indicted (2 U. S. C. 192) punishes only the failure to answer questions "pertinent" to the inquiry, and witnesses before this Committee are therefore relegated to the authorizing statute in determining whether particular questions are or are not

"pertinent." In the authorizing statute, the qualifying adjectives "un-American" and "subversive", even if read in conjunction with the phrase "attacks the principle of the form of government as guaranteed by our Constitution", are far too general to furnish a valid basis for a criminal indictment. *United States* v. *Cohen Grocery Co.*, 255 U. S. 81 (1921); *Musser* v. *Utah*, 333 U. S. 95 (1948).

This contention has, to be sure, been rejected by the federal courts of appeal in two circuits.[53] In both cases, however, the dissenting judge was of the opinion that the Committee's statutory authorization is fatally defective for purposes of constitutional due process. In support of this conclusion, Judge Edgerton pointed out[54] that the President's Advisory Commission on Universal Training had described the expression "un-American" as an "epithet" which meant only that something "has not been done before in America." He declared that:

> "The term un-American is completely indefinite. Government counsel do not attempt to define it and concede that they cannot define it. . . . In a literal sense whatever occurs in America is American."

The judges on the majority side thought that the validity of the authorizing statute is saved by the phrase "principle of the form of government as guaranteed by the Constitution." The Committee itself, in one of its publications, endeavors to equate the adjectives "subversive" and "un-American" with "seeking to overthrow it [the form of government guaranteed by our Constitution] by use of force and violence, in violation of established law."[55] Under this in-

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[53] *United States* v. *Josephson*, 165 F. 2d 82 (C. A. 2d 1948) *cert. den.* 333 U. S. 838; *Barsky* v. *United States*, 167 F. 2d 241 *cert. den.* 334 U. S. 843 (C. A. D. C. 1948).

[54] 167 F. 2d at 261-63.

[55] *This is YOUR House Committee on Un-American Activities* (1954), p. 2.

terpretation, the authorizing statute would appear to call for an investigation of the sort of propaganda activities punishable under the Smith Act (18 U. S. C. 2385).

Whether the authorizing statute is susceptible to such a construction is, for present purposes, academic. So construed, the questions put to petitioner would obviously fall far outside the scope of the investigation authorized by Congress, and the indictment would have to be dismissed for lack of any showing of pertinence.[56] In any event, this "Smith Act" construction certainly bears no relation to the interpretation which the Committee has followed in actual practice. Petitioner has mentioned in his brief[57] the remarkable variety of subjects in which the Committee has interested itself, for which it is quite impossible to discover any common denominator. As Judge Charles Clark pointed out in his dissenting opinion in the *Josephson* case, *supra*,[58] the Committee has applied the term "un-American" so broadly as to suggest that motion pictures which "placed bankers in an unfavorable light" are un-American, and therefore presumably within the ambit of the Committee's scrutiny.

And so, even if "un-American" *might* be given a content sufficiently precise for criminal purposes, that theoretical possibility is of no assistance to a witness before the Committee, endeavoring to determine whether or not a question which has been put to him is pertinent to the authorized inquiry. Cf. *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 533 (involving the word "sacrilegious"). It therefore becomes important once more[59] to recall that where the precision of an investigatory authorization is at issue, a distinction is properly to be drawn between an exer-

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[56]See Point I, *supra*, pp. 11-20.
[57]At pp. 122-23.
[58]165 F. 2d at 96.
[59]*Supra*, p. 19.

cise of the legislature's own contempt power, and a criminal prosecution for failure to answer questions.

Where the contempt power is utilized, the witness is haled before the bar of the House or Senate itself and ordered to respond to specific questions. There is then no longer any question of the precision of the resolution empowering the committee to investigate, for the House or Senate itself has taken over the inquisitorial role. Furthermore—and here is the even more crucial point—once the witness discovers at the bar of the House or Senate that the question is indeed deemed pertinent, he has an opportunity to answer it and thus avoid punishment. But if his case is sent to the courts for criminal trial, his fate hangs on the accuracy of his original judgment of the question's pertinency to the authorizing resolution. It is too late for him to stand corrected and mend his ways. If wrong, he goes to jail.

For these reasons, the precision of a legislative resolution authorizing a committee to investigate a matter is of less importance when testimony is to be compelled only by the legislature's own power to punish uncooperative witnesses for contempt. That is why this issue never arose in early times, and why the broadest and most general authorizations to committees aroused no criticism. In 1781, for example, the Virginia House of Delegates authorized several of its standing committees—*e.g.* on religion, courts of justice, and trade—to send for persons and papers, without further specification.[60] This amounted to no more than a division of general categories of legislative business among several committees, but no one worried about this generality because no one was going to be criminally liable for refusing to answer questions.

But in a criminal prosecution for failure to answer, the precision of the authorizing resolution is a matter of crucial

[60] See Potts, *Power of Legislative Bodies to Punish for Contempt*, 74 U. of Penn. Law Rev. 691, at 716 (1926).

importance. If Congress chooses to inflict punishment in the case of "pertinent" questions, then is should be held to accepted constitutional standards of precision, so that witnesses are not obliged to gamble in deciding whether questions put to them are or are not pertinent. In the present case the relevant statutory provisions are vague and uncertain far beyond the permissible bounds, and the indictment must therefore be dismissed.

CONCLUSION

A reversal of petitioner's conviction will not diminish the value of legislative investigations as an instrument of government, nor hamper Congress in obtaining information needed in the conduct of its legislative business. It will not in any way obstruct the Government's activities or limit its powers in the field of national security.

It is, rather, investigations such as the one out of which this prosecution arises that have done incalculable harm to the prestige, and capacity for good, of legislative inquiries as an institution of democratic government. The ill repute into which they have fallen is a matter of common knowledge, of which this Court has taken judicial notice.[61] This is only partly due to the extravagant behavior of certain members of Congressional committees; much more, it is the result of some committees' total disregard of their historic function, their obvious lack of interest in serious problems of legislation, and their incessant grasping for the powers of inquisitional tribunals.

And so today, nothing would do more to restore dignity and health to this tremendously valuable but much-abused governmental institution, than for this Court to reaffirm its true purposes, and retrace the constitutional framework within which it operates. For in this prosecution, as in

[61] See *United States* v. *Rumely*, *supra*; at p. 44.

others currently pending), the Government seems to have forgotten that Congressional inquiry, and the contempt power which gives teeth to the process, are "a means to an end and not the end itself", and that their exercise should be governed by the salutary, republican principle:[62] "the least possible power adequate to the end proposed."

The *amicus curiae* respectfully joins in petitioner's prayer that the decision below be reversed.

December 7, 1956.

Respectfully submitted,

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[62]See *Marshall* v. *Gordon*, 243 U. S. 521, 541 (1917), quoting *Anderson* v. *Dunn*, 6 Wheat. 204, 230-31 (1821). *Cf. Toth* v. *Quarles*, 330 U. S. 11, 23 (1955).

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IN THE

Supreme Court of the United States

October Term, 1956

No. 261

JOHN T. WATKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF AMERICAN BAR ASSOCIATION
Amicus Curiae

HERBERT R. O'CONOR,
Chairman

Special Committee on Communist Tactics, Strategy and Objectives of the American Bar Association

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INTEREST OF AMICUS

The American Bar Association, appearing in this case, with the consent of both parties, is vitally interested in the issue herein involved and considers it to be its duty to lend any assistance in its power to the fullest discussion of the questions and to their proper determination.

The American Bar Association heretofore appointed a Special Committee on Communist Tactics, Strategy and Objectives and has given continuous attention to developments bearing upon the question of national security. Through this Special Committee the Board of Governors of the said Association was advised of the pendency of this case and the issues involved, following which notification the Board authorized the Special Committee to take steps in order to present a brief setting forth its views relating to the questions involved.

HISTORY OF THE CASE ON APPEAL

On January 26, 1956, a divided panel of three judges of the United States Court of Appeals for the District of Columbia Circuit reversed Watkins' conviction. The majority of this panel consisted of Chief Judge Edgerton and Judge Bazelon. A vigorous dissenting opinion was filed by Judge Bastian. The majority and dissenting opinions of the panel were printed in slip form and issued by the court but have not been reported in the official reports.

Upon application of the government, a rehearing *en banc* was ordered by the court on February 17, 1956, and the order of the three-judge panel was vacated.

On April 23, 1956, Watkins' conviction was affirmed by the full Court of Appeals *en banc* by a vote of 6-2, speaking through Judge Bastian. Chief Judge Edgerton and Judge Bazelon filed a dissent nearly identical with their earlier opinion for the panel. 233 F. 2d 681.

QUESTIONS PRESENTED

(1) Was the Committee on Un-American Activities of the House of Representatives acting in furtherance of a legitimate legislative purpose within the scope of its authorization in seeking the information in question from petitioner?

(2) Does the information sought by the Committee abridge petitioner's First Amendment rights?

ARGUMENT

I

CONGRESS HAS BROAD AND EXTENSIVE POWERS TO INVESTIGATE AND INQUIRE IN AID OF LEGISLATION

The power of Congress to make investigations and exact testimony in aid of legislation is implied as an

attribute to the power to legislate. *McGrain* v. *Daugherty*, 273 U.S. 135, 161 (1927).

In *Quinn* v. *United States*, 349 U.S. 155, 160 (1955), this court, commenting on the scope of the congressional investigating power, characterized it as being "co-extensive with the power to legislate," but subject to the limitation, *inter alia*, that such power could not be used "to inquire into private affairs unrelated to a valid legislative purpose," citing *Kilbourn* v. *Thompson*, 103 U.S. 168, 190.

The Committee Was Acting In Furtherance Of A Legislative Purpose Within The Scope Of Its Authorization In Seeking The Information In Question

Congress has the authority—indeed the compelling duty—to inquire fully into matters and conditions relating to Communism generally, its objectives, and its particular activities.[1]

By no fair and reasonable interpretation of the authority vested in the Committee on Un-American Activities can a sound basis exist for denying to it the power to conduct hearings in aid of legislation relating to communist-infiltrated labor unions. That such was its avowed purpose in subpoenaeing the petitioners to testify is evident from the Chairman's opening statement quoted in the majority opinion below at page 684-686.

The petitioner contends that despite the announcement of any other purpose the true purpose was solely one of "exposure for exposure's sake" and "retributive justice," a non-legislative purpose in violation of the doctrine of

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[1] The legitimate exercise of the investigating power is not restricted to legislation in actual contemplation, nor is its power to conduct hearings for legislative purposes to be measured by recommendations for legislation or their absence. See *In re Chapman*, 166 U.S. 661,670, (1897); *Townsend* v. *United States*, 95 F.2d 352,355 (C.A.D.C., 1938), *Barsky* v. *United States*, 167 F.2d 241, 245 (C.A.D.C., 1948), *cert. den.*, 334 U.S. 843 (1948), *rehearing den.*, 339 U.S. 899 (1950).

separation of powers. He urges upon this court, as he did without success in the District Court and Court of Appeals, the adoption of a novel proposition of law by which the courts in prosecutions for contempt of Congress scrutinize the motives of a Congressional Committee in order to determine whether the Committee was in fact acting with a legislative purpose in making an inquiry in a field in which it was authorized to conduct hearings in aid of legislation. He urges the establishment of some criteria whereby the courts should determine the presence or absence of a legislative purpose by considering the statements of individual members of the Committee wherever made; by examining the questions asked by the Committee and to speculate as to those which it did not ask; and to weigh and evaluate the sufficiency of the information already in the files of the Committee obtained from other sources—all to seek to arrive at a judicial determination of the motive with which a legislative committee conducts hearings within its authorized sphere of activity.

It is settled that in a field proper for legislative action, a legislative purpose on the part of Congress will be presumed, and the courts should not scrutinize the motives of Congress or its Committees. See *McGrain* v. *Daugherty, supra* wherein this court held that the courts are bound to presume that the action of Congress or its committees is with a legitimate object if it is capable of being so construed, and they have no right to assume that a contrary object was intended (citing with approval *People* v. *Keeler*, 99 N.Y. 463, 487 (1885).

Thus, in *Morford* v. *United States*, 176 F.2d 54 (C.A. D.C., 1949), *rev'd on other grounds*, 339 U.S. 258 (1950), the court, in upholding the trial court's exclusion of evidence that the Committee on Un-American Activities was not acting in furtherance of a legislative purpose in seeking the information which Morford refused to give, said

"a legitimate legislative purpose is presumed when the general subject of investigation is one concerning which Congress can legislate, and when the information sought would materially aid its consideration," citing *McGrain* v. *Daugherty, supra.* In that case, as here, it was urged that the Committee was merely seeking the names of persons for the non-legislative purpose of adding such names to its "blacklist."

In *Eisler* v. *United States*, 170 F.2d 273, 279 (C.A. D.C., 1948), the court had before it contentions similar to those of this petitioner. It stated "the court has no authority to scrutinize the motives of Congress or one of its committees," and properly refused to admit evidence that the Committee's real purpose was "to harass and punish him for his political beliefs • • • and that the Committee acted for ulterior motives not within the scope of its or Congress' powers."

In *Lawson* v. *United States*, 176 F.2d 49 (C.A.D.C., 1949) *cert. den.*, 339 U.S. 934 (1950), *rehearing den.*, 339 U.S. 972 (1950), it was urged by appellant that the trial court erred in excluding evidence that the Committee was pursuing a non-legislative purpose because its primary purpose was to "blacklist," "expose," and "spotlight" him to cause his discharge, and that where the Committee already had the information sought from the witness it was "merely cumulative" and the hearing has a non-legislative purpose and hence the information was not "pertinent" (Records and Briefs, Court of Appeals, D.C., Vol. 772, appellant's brief, p 72, 90). These contentions were dismissed by the Court of Appeals without discussion because they did not "merit discussion" (at p. 54). These same matters were assigned as errors in Lawson's petition for certiorari (Lawson's Petition, p. 67-77, 96).

That relevant testimony in aid of legislation may be compelled by the Committee which may incidentally or as a natural consequence of its constitutional activities

involve the "exposure" of individnals can afford no basis in itself for limiting the legitimate inquisitorial powers of the Committee.[2]

In *Barsky* v. *United States, supra*, the court held that it had "no authority to speak or act upon the conduct by the legislative branch of its own business, so long as the bounds of power and pertinency are not exceeded, and the mere possibility that the power of inquiry may be abused 'affords no ground for denying the power'" (citing *McGrain* v. *Daugherty, supra*, at page 175). And in *Dennis* v. *United States*, 171 F.2d 986, 988 (C.A.D.C., 1949), aff'd., 339 U. S. 162 (1950), the court said "it is neither the business nor the prerogative of this court or any other court to pass upon either the wisdom of Congress in setting up the Committee, the private or public character of members of the Committee or the propriety of the procedure of the Committee unless it transgresses the authority committed to it by the Congress under the Constitution."

To the same effect is the recent case of *United States* v. *Orman*, 207 F. 2d 148, 157 (C.A. 3, 1953).

A most recent case, decided January 3, 1957, dealing with similar issues to those involved in the Watkins case, is *Barenblatt* v. *United States* No. 13,327, United States Court of Appeals for the District of Columbia Circuit. The opinion, written by Judge Bastian for a unanimous Court, convincingly states the reasons for not unduly restricting the operations of Congressional Committees. Also the Court after reviewing the history of the Committee on Un-American Activities of the House of Representatives concluded that there is abundant reason to sustain its inquiries into Communist infiltration.

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[2] Watkins v. United States, *supra*, at p. 687; United States v. Josephson, Post p. 9, at p. 89.

The Court stated

> "Appellant next contends that the primary purpose of the subcommittee's inquiry was to "expose" his beliefs and associations and that, therefore, the subcommittee exceeded the bounds of its investigative power. There can be no doubt that Congress has the power of inquiry and investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The very resolution establishing the committee indicates that the subject under inquiry was one concerning which Congress could legislate. The fact that such an inquiry or investigation may reveal or "expose" some facts embarrassing to some one is incidental and without effect upon the validity of the inquiry.
>
> "Evidence was presented at the trial to show that the House Committee on Un-American Activities had been engaged in a continuing investigation into communist methods of infiltration * * *"

Of great importance is the Court's ruling, with supporting authority that

> "Courts must presume congressional investigations to have valid legislative purposes. Townsend v. United States, 95 F.2nd, 352, cert. denied, 303 U.S. 664 (1938).

Further on the related question the Court stated

> "Though we, of course, agree that Congress does not have a general power to inquire into political beliefs and associations, it does have that power where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has."

In another recently decided Case—that of *Sacher* v. *United States* No. 13,302, U. S. Court of Appeals for District of Columbia, decided January 3, 1957, the Court speaking through Judge Burger stated

> "It is appellant's contention that the questions forming the basis of the indictment could not be pertinent to the subject of inquiry for appellant's testimony demonstrated he had no knowledge of the circumstances leading to the recantation. If this were true an interested party could effectively determine the pertinency of questions and the inquiring body would abdicate in favor of the witnesses. Pertinency is not measured by the amount of information a witness may wish to disclose. The test is whether under the circumstances the information reasonably sought is germane to the subject of inquiry."

For well-considered rulings by a State Court in this field particularly bearing upon the legislative purpose and validity of Committee action thereunder, see

Wyman v. Sweezy, 100 N. H. 103
and
Nelson v. Wyman, 99 N. H. 33

ARGUMENT

II

THE DISCLOSURES SOUGHT BY THE COMMITTEE DO NOT ABRIDGE PETITIONER'S FIRST AMENDMENT RIGHTS

In connection with its investigation, the Committee sought to identify the former associates of the petitioner as members of the Communist Party between 1942 and 1947. The question was directed to a possible answer calculated to aid materially the legitimate legislative objectives of the investigation, and an answer should be compelled over a claim of First Amendment rights.

In *Barsky* v. *United States, supra*, the court, holding that the Committee on Un-American Activities could properly ask a witness if he is a member of the Communist Party over a claim of First Amendment rights, stated:

> "If Congress has power to inquire into the subject of Communism and the Communist Party, it has

power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. Moreover, the accuracy of the information obtained depends in large part upon the knowledge and the attitude of the witness whether present before the Committee or represented by the testimony of another. We note at this point that the arguments directed to the invalidity of this inquiry under the First Amendment would apply to an inquiry directed to another person as well as to one directed to the individual himself. The right to refuse self-incrimination is not involved. The problem relates to the power of inquiry into a matter which is not a violation of law." (P. 246).

" * * * To remain uninformed upon a subject thus represented would be failure in Congressional responsibility." (P. 247).

See *United States* v. *Josephson*, 165 F.2d 82 (C.A. 2, 1947) *cert. den.*, 333 U.S. 838 (1948) *rehearing den.*, 333 U. S. 858 (1948), *motion for leave to file a 2nd petition for rehearing den.*, 335 U. S. 899 (1948), wherein the court held that the Committee on Un-American Activities had a right to inquire into Communism, over a claim of First Amendment rights; In *Lawson* v. *United States, supra,* where the court held that the Committee on Un-American Activities could compel appellants to answer whether they were members of the Communist Party and the Screen Writers Guild over a First Amendment claim that they could not be compelled to disclose "their private beliefs and associations"; similarly, in *Morford* v. *United States, supra,* where the court held that the Committee could compel the witness to give the names of persons who produced the publication "Reporter," because "Personnel is part of the subject;" and in *Rogers* v. *United States*, 340 U.S. 367 (1951), where a witness before a grand jury originally refused to identify the person to whom she had given the Party's books because "I don't feel that I

should subject a person or persons to the same thing that I'm going through" (page 368), the court said:

> "Petitioner expressly placed her original declination to answer on an untenable ground, since a refusal to answer cannot be justified by a desire to protect others from punishment, much less to protect another from interrogation by a grand jury" (p. 371).

While petitioner concedes that the substantiality of the congressional need for information may "on occasion" justify the compulsion of disclosures over a claim of First Amendment rights, he cites *United States* v. *Rumley*, 345 U.S. 41, for the proposition that the Amendment occupies a preferred position in any weighing of the contending principles, i.e., the Congressional exercise of its power of inquiry as against the guarantees of First Amendment rights.

So necessary is the proper functioning of the investigative powers of the legislative process that any unwarranted limitation placed by the Courts upon them would result in irreparable harm to this coordinate branch of the Government. While no deprivation of rights and privileges by the Congress in the course of investigations should be permitted, the Courts must exercise judicial restraint so as not to thwart the purpose and objectives of the legislative Committees when operating properly within the sphere of their jurisdiction.

CONCLUSION

Official records and common knowledge furnish proof of the fact that the Congress of the United States over recent years has been occupied constantly with problems growing out of the challenge of Communism. In every session during the last two decades measures have been presented for consideration relating to subversion. The organization of the Un-American Activities Committee by the House of Representatives and the creation of the Internal Security Subcommittee by the Senate show con-

clusively that the legislative branch of the Government realized the gravity of the situation and was determined to act in preservation of this government.

It was in fulfillment of its duty in this respect that the Un-American Activities Committee undertook the inquiries which included the interrogation of the petitioner, John T. Watkins. Naturally the questioning was pressed when Watkins admitted that he had cooperated with the Communists and possessed information as to the operations of these enemies of the United States. When it is borne in mind that this treacherous apparatus is under the domination of a foreign government and is calculatingly directed toward the overthrow of American institutions by force and violence,[3] the exercise of judicial realism becomes imperative in enunciating a legal principle preserving the broadest possible fact-finding powers in Congress to fulfill its legislative duty.

That the legal defenses against the Communist Conspiracy have not been perfected is attested by the fact that the Internal Security Act of 1950 has not yet been finally acted upon by the Supreme Court of the United States. It is a fact that the legislative branch must give continuing attention to the study and consideration of every aspect of this problem. To the credit of the House Un-American Activities Committee and of the Senate Internal Security Subcommittee it can be said that unremitting attention has been given in order to legislate, if the Courts should eventually decide that the present statutes are in need of revision or amendment.

No clearer or more authoritative declaration could have been given than the message to the Joint Session of the Congress by President Eisenhower on January 5th, 1957, setting out in detail the ever-present danger to American institutions posed by the Soviet-inspired Communist

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[3] See legislative findings in Internal Security Act of 1950, Section 2, 50 U.S.C. 781, 64 Stat. 987 *et seq.*

Party. It is false to the point of absurdity to dignify this conspiratorial organization as a "political party", which its sympathizers and even some Courts are prone to do. President Eisenhower himself left no doubt as to the conviction of the United States Government that clear and present danger faces us from the Communist conspiracy.

The President in portraying the crises through which America has passed stated that the world has experienced "instability which has been heightened and at times manipulated by International Communism". He answered in this January 5, 1957 message the misguided zealots who would further temporize with the Soviet propagandists when he said

> "International Communism, of course, seeks to mask its purpose of domination by expressions of good will and by superficially attractive offers of political, economic and military aid."

And lest complacency mark the American attitude our President, as Commander-in-Chief, warned that there exists "increased danger from International Communism."

We commend to the Supreme Court the reasoning and clarity of the opinion rendered by Judge Bastian of the Circuit Court of Appeals sitting *en banc*. While vigilant of the rights of the traverser in a criminal proceeding, this learned jurist was not unmindful of the necessary safeguards for the protection of the individual. Constitutional privileges must ever be preserved, so that no individual defendant will ever be denied the basic rights of American citizenship. Nevertheless those safeguards must not be over-extended to the point that enemies of our form of government be encouraged and aided in their subversive purposes.

In respectfully suggesting to this Court that the issues herein presented are of far-reaching importance, we do not countenance any departure from those foundational

principles which have ever supported the free institutions of the United States. But we would do a disservice to our government and especially to the Judicial Branch, which has always proved a bulwark of our liberties, if we urged the Court to do anything which would have the effect of lessening national efforts for self preservation.

We believe that in every individual case, no matter how inconsequential it may appear to be, there is the opportunity of strengthening or weakening this free constitutional Republic, which is the last hope of struggling human beings the world over. It is our belief that we must preserve individual rights and freedoms but that the best guarantee we can have to accomplish this purpose is the protection and preservation of our national security.

The danger of loss of our freedoms must not be risked. The elected representatives of our Legislative and Executive Departments must be upheld in their actions unless there is violation of either Constitutional or statutory provisions when they are acting in protection of the national welfare. We repeat the expressed belief in our Brief, as Amicus Curiae, in the case of *Communist Party of the United States of America* v. *Subversive Activities Control Board*, No. 48—October Term, 1955, that

> "this country is entitled to protection—not alibis or epitaphs".

It is respectfully submitted that the order of the Circuit Court of Appeals in this case affirming the conviction

of the District Court should be upheld by the Supreme Court of the United States.

Respectfully submitted,

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Chairman

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